

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2098

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In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 77-2098

APPEAL
from the
UNITED STATES DISTRICT COURT
for the
DISTRICT OF CONNECTICUT

JOHN RALLS,

-APPELLANT,

JOHN MANSON,

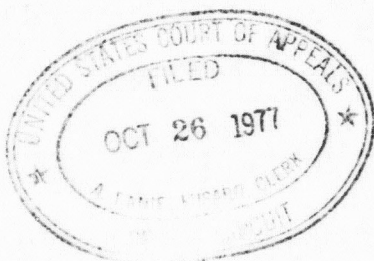
-APPELLEE.

APPELLANT'S APPENDIX

Submitted by:

DAVID S. GOLUB
733 Summer Street
Stamford, Connecticut

ATTORNEY FOR THE APPELLANT

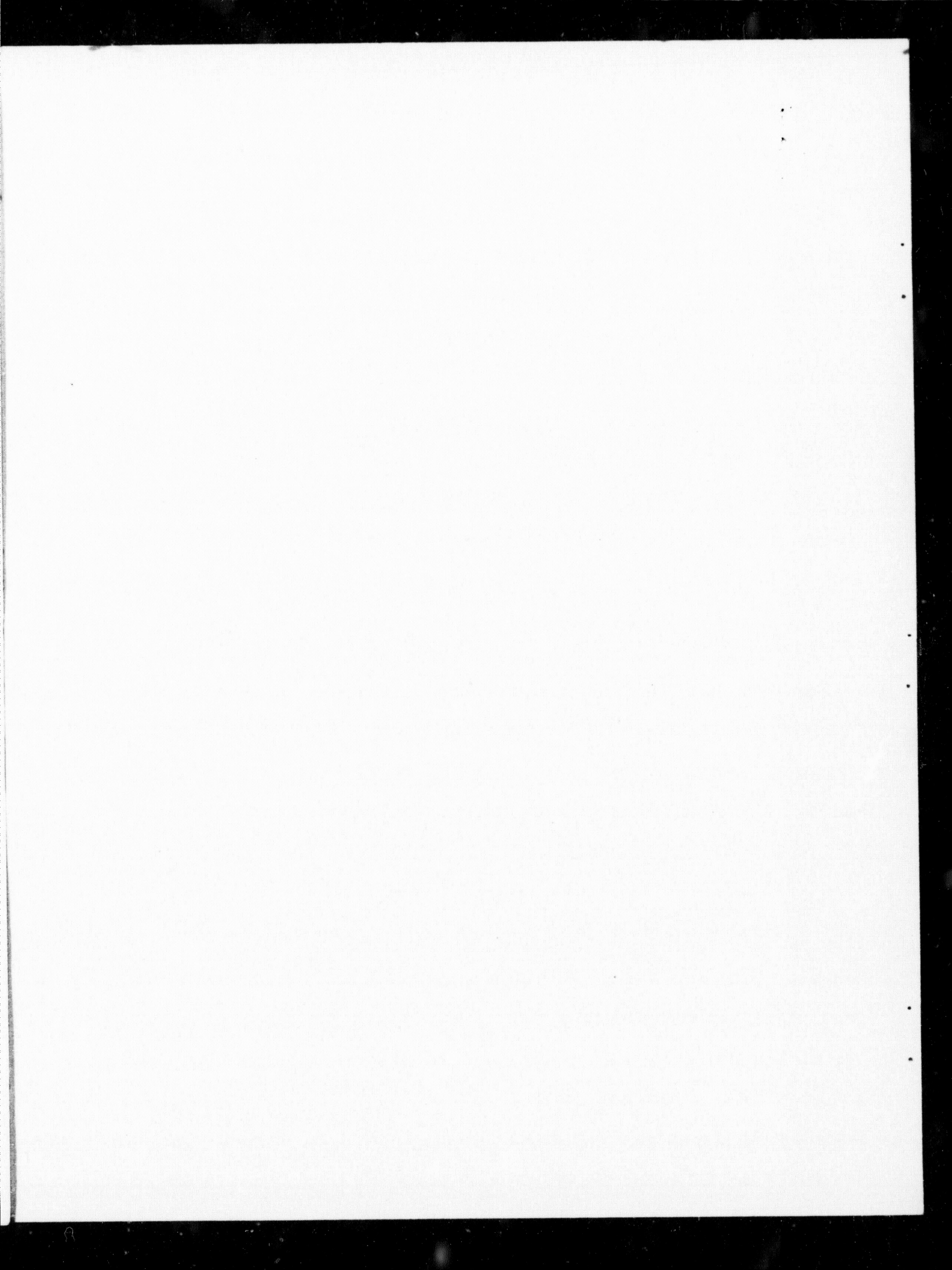


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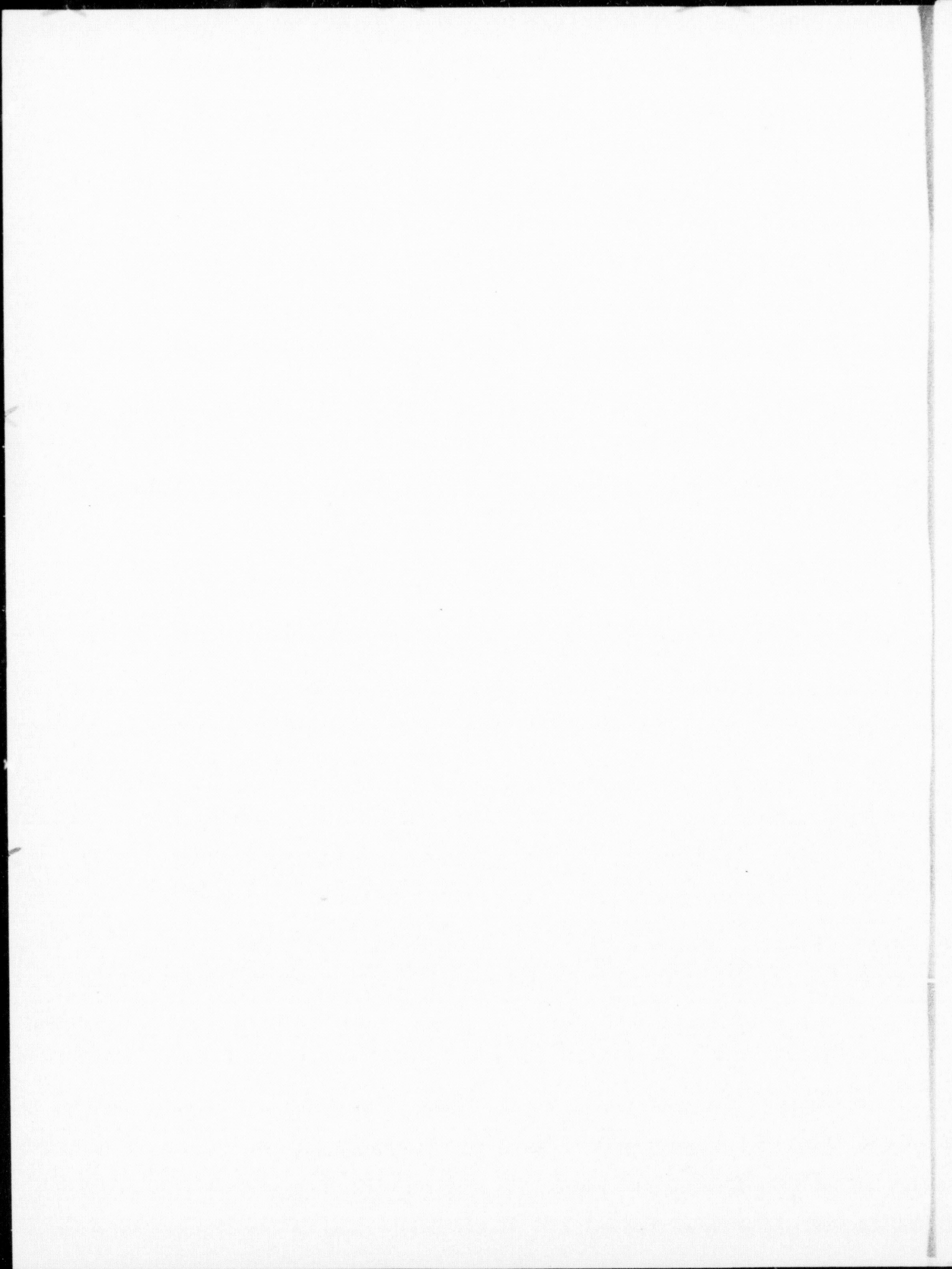


EXHIBIT A: DOCKET ENTRIES

A-1

DIST/OFFICE	DOCKET		FILING DATE			N/S	O	R	H	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM	DOCKET	
	YR.	NUMBER	MO.	DAY	YEAR									YR.	NUMBER
205/2	H75	107	04	02	75	3		530	1			0505		H75	107

PLAINTIFFS

RALLS, John

DEFENDANTS

~~RECEIVED~~
MUNSON, John R. Commissioner,
Connecticut Department of Corrections

CAUSE

Petition for a writ of habeas corpus brought by a state inmate.

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ATTORNEY

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U. S. District Court

Deputy Clerk

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DATE 1975	NR.	PROCEEDINGS
4-2	1.	Petition for a writ of habeas corpus, motion for permission to proceed in forma pauperis and for appt of counsel, Granted. Blumenfeld, J m 4-2-75.
"	2.	Order to Show Cause, Blumenfeld, J. m 4-2-75. (4/11/75 ret.).
"	3.	Affidavits in support of motion and petition, and Exhibits A, B, C & D.
"		Summons issued and together with same and copies of petition, attested copies of motion and order handed to Marshal for service upon Manson and St. Atty for New H. County.
4-14	4.	ORDER, Appt. David Golub to represent the petitioner. Copies of file mailed to Atty Golub. Copies of order mailed to petitioner and Atty Williams
4-14	5.	Marshal's return showing service.
4-21	6.	Appearances of Ernest J. Piette Jr entered for the def. and Jerrold Barnett.
"	7.	Return to Petition for writ of Habeas Corpus.
"	8.	Motion for Recusation.
"	9.	Respondents Affidavit in Support of Motion to Recusation.
"	10.	Respondents Memorandum in support of motion to recusation, with exhibits 1-4.
4-23		Motion for Recusation " In view of U.S. vs. Hon. Frederick Van Pelt Bryan, 393 Fed. 2d 90 which endorses a rule which rises above principle in cases of this nature I recuse myself from further consideration of this case, M. Joseph Blumenfeld J m 4-24-75. Copies mailed to counsel.
6-18		Assigned to Judge Clarie per motion for recusation endorsement of 4/23/75.
7-3	11.	Respondents Memorandum in Opposition to Petitioners Motion to Transfer.
7-10	12.	Motion to Transfer filed by Pltf.
7-16		Motion #12 to Transfer, "motion to transfer is denied. Clarie, J. m 7-16-75. Copies mailed to counsel.
8-28	13.	Motion for Bail filed by petitioner.
11-6	14.	Respondent's Memorandum in opposition to petitioner's motion for bail.
1-6-76	15.	Deposition of Anthony DeMayo
"	16.	Deposition of John J. Panahue.
"	17.	Deposition of Francis McQuade
1-7	18	St. Motion filed that testimony may be received by testimony. Ordered Accordingly, Markowski, C. m 1-8-76. Copies mailed.
1-15		CJA 21 executed, Clarie, J. authorizing payment of \$126.50 to Gerard Gale, Court Reporter, and mailed to A.O. for payment.
5-11	19	Motion for Hearing Re: Oral Hearing in Court
7-27	20	Motion For Admission into Evidence of Petitioner's Exhibits.
7-27	21	Memorandum in Support of Petitioner's Application For Writ of Habeas Corpus.
9-9	22	Motion for Admission into Evidence of Respondent's Exhibit A. (trial transcript)
9-10	23	Memorandum in Opposition to Petitioner's Application for Writ of Habeas Corpus.
9-14 1977		Motion #22 Refer to Magistrate Eagan, Clarie, J. m 9-14-76
7-29	24	Memorandum of Decision, Eagan. M. Copies mailed.
8-9	25	JUDGMENT entered. Markowski C. m 8-10-77. Copies mailed.
8-9	26	Motion for Issuance of Certificate of Probable Cause filed by Petitioner.
8-9	27	Notice of Appeal filed by Petitioner.
8-15		End. on notice of appeal "Approved in forma pauperis; So Ordered, Clarie, J. m 8/16/77. Copies mailed.
		End. on motion for issuance of certificate of probable cause "GRANTED Clarie, J. m 8/16/77. Copies mailed. Attested copies of notice of app and motion and copies of docket entries mailed to U.S. Court of Appeal and New Haven. Civil Management Plan and Forms C & D mailed to Atty Golub.

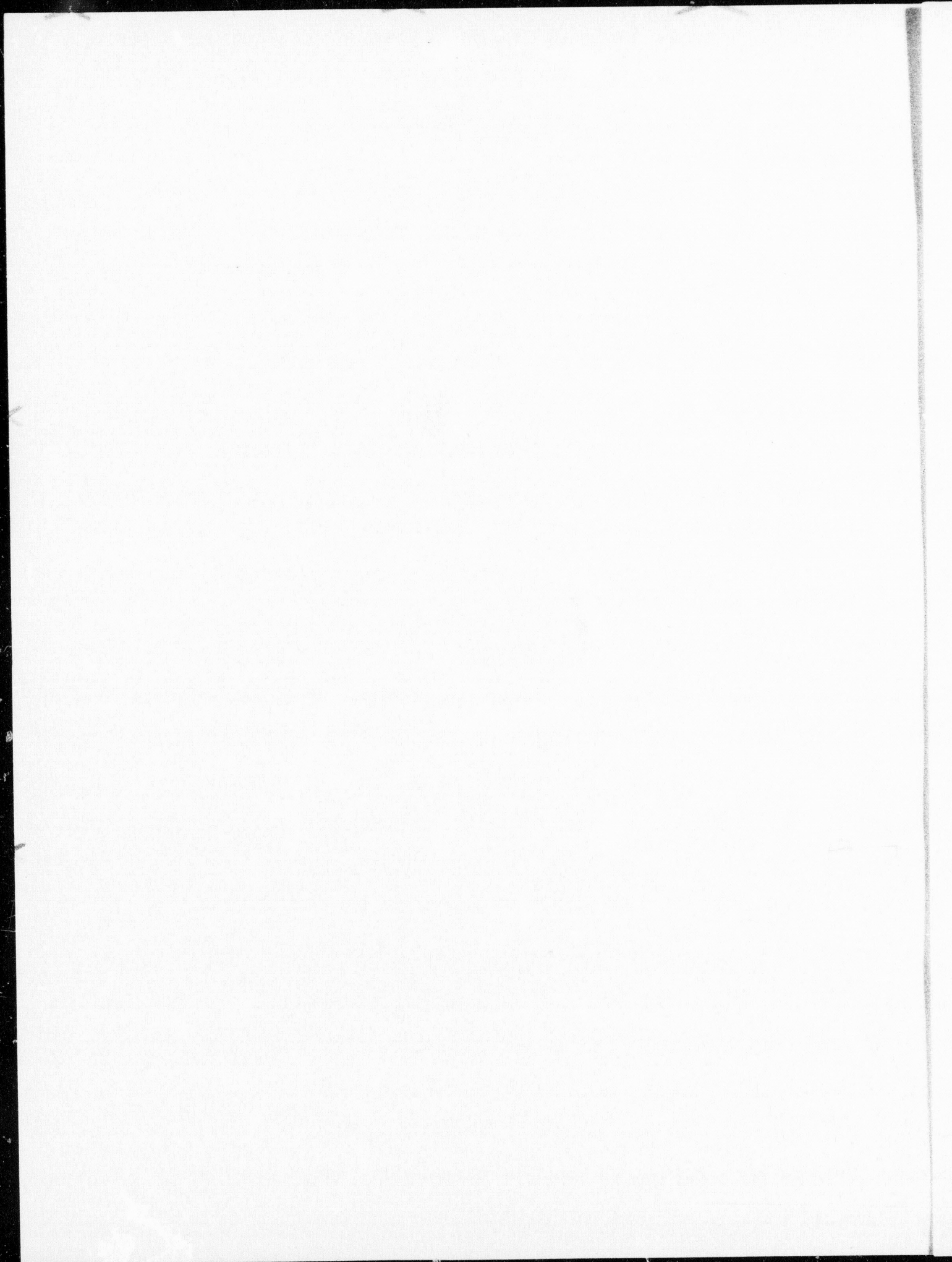


EXHIBIT B: MEMORANDUM OF DECISION

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U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN RALLS

:

VS.

:

CIVIL NO. H-75-107

JOHN R. MANSON, COMMISSIONER, :
CONNECTICUT DEPARTMENT OF
CORRECTION

MEMORANDUM OF DECISION

On June 15, 1970, John W. Ralls was indicted for murder in the first degree in connection with the gunshot slaying of his mother-in-law, Barbara Howell. Ralls was convicted of second degree murder on November 17, 1970, after a two week jury trial before the Honorable Louis George in the Superior Court for New Haven County. He was sent to the Connecticut Correctional Institution at Somers, where he is presently serving a life sentence. Throughout the proceedings in the Superior Court, including the trial, Ralls was represented by the Public Defender for New Haven County.

A timely notice of appeal to the Supreme Court of Connecticut from Ralls' murder conviction was filed in the Superior Court on December 30, 1970. A printed record on appeal was filed with the Supreme Court on October 31, 1973, and the Supreme Court later fixed a briefing schedule calling for all briefs to be filed by September 18, 1974. The Supreme

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Court of Connecticut in its October 1974 term heard oral argument on the appeal, and on December 31, 1974, affirmed the conviction.

While the appeal to the Supreme Court was pending, Ralls filed his original petition for a writ of habeas corpus in the District Court of Connecticut on October 17, 1973. On May 7, 1974, the District Court filed a memorandum of decision holding that 1) because of the excessive delay at the state appellate level, it could not be said that the defendant had failed to exhaust his state remedies, and 2) that two of Ralls' substantive claims of alleged constitutional errors should be sustained: that the jury was improperly informed of the defendant's prior arrests, and that the judge's instructions were coercive. Ralls v. Manson, 375 F. Supp. 1217 (D. Conn. 1974). Ralls was ordered released from custody unless given a new trial within sixty days.

Upon appeal, the Court of Appeals reversed in a per curiam opinion stating that the defendant had not exhausted his state remedies and thus the trial court should not intervene at this point. The court did not reach the merits of Ralls' substantive claims. Ralls v. Manson, 503 F.2d 491 (2d Cir. 1974).

In a concurring opinion, Judge Lumbard did discuss the substantive issues upon which the District Court had granted the petition. Judge Lumbard concluded that the grounds upon which the writ was issued fell short of being errors of constitutional dimension. Id. at 499.

Ralls returned to District Court of Connecticut after the state court had denied his appeal, filing a new petition for a writ of habeas corpus on April 2, 1975. Seven errors de-

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manding relief have been presented and briefed by the petitioner in support of his application. The State has submitted a brief to this court in opposition to the petitioner's application.

I. Statement of the Facts at Trial

At trial the following evidence was presented:

On March 1, 1970, the body of Barbara Howell was found shot to death in her car in a supermarket parking lot, in Hamden, Connecticut. Mrs. Howell had been shot four times at close range with a .32 automatic revolver. The time of death was estimated by the Medical Examiner to be between 9:00-11:00 that morning.

John Ralls, Mrs. Howell's son-in-law, had gone riding with her in the latter's car at 9:30 that morning and, at between 10:30 and 11:00, arrived alone at the home of Samuel Bowens, hoping to cash a \$500.00 check. At that time Ralls was estranged from his wife, who was Mrs. Howell's daughter, and believed his mother-in-law to be responsible for their separation. Feelings between the two were strained. The evidence disclosed that on the night before the murder, Ralls had been in possession of a .32 automatic. On the day of the murder, he had left home and could not be located until he was arrested three days later at the Bowen's home. At that time he denied having killed Howell.

While in the custody of the arresting officers, Ralls informed them that Mrs. Howell had driven him to get gasoline for his car, which had run out of gas the night before. After starting his car at about 10:15 or 10:30 p.m., Ralls testified that he had left Mrs. Howell. He claimed that a friend, James

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Senior, had given him a ride back to the Howell home the following morning.

The West Haven Police Department received no complaints of a disabled motor vehicle in the area on the night in question, and employees of several nearby business establishments did not recall seeing a disabled vehicle on that particular date. Employees of the gas station where Ralls said he purchased gas did not recall seeing him on that morning. Senior testified that he gave Ralls a ride to his car that morning between 10:30 and 11:00.

Donald Rawls,^{1/} Ralls' brother, testified that his mother told him that on the day before the murder, John Ralls said he was going to kill Barbara Howell. Jacqueline Rawls, Ralls' daughter, testified that her sister told her that Ralls was going to hurt Mrs. Howell. Gwedolyn Rawls, Ralls' wife, testified that Ralls on several occasions had stabbed and assaulted her, that she had him arrested, and that he had threatened her and Mrs. Howell.

II. Supplemental Charges to the Jury

The defendant states that the supplemental charges to the jury were coercive and thus violated his right to a fair trial.

The first supplemental charge occurred two hours and forty-five minutes after the jury had begun deliberations. At about 5:00 p.m. the jury was called and the judge gave the following statement to them:

I have called you all because of the hour. I am not trying to hurry your deliberation at all. I want you to have enough time to consider them with all the thought that you can. However, I would like to know if it is a matter of a couple of hours, I can send out and get sandwiches. If it is a matter of more than that, and you want dinner,

^{1/} The petitioner spells his last name "Ralls". Other members of his family spell their name "Rawls"

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it can be arranged. I can send out and make those arrangements. I cannot allow you to leave before I have some sort of verdict.

You could readily see, if someone got sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility.

At 8:07 the trial judge called the jury in and gave it a "Chip Smith" supplemental charge:

Good evening ladies and gentlemen. I sense that you must be having a little difficulty in reaching your verdict. However, as I have told you time and again, your verdict must be unanimous. It is true, of course, that a verdict to which each juror agrees has got to be his own conclusions and not the mere acquiescence in, or the conclusions of, his fellows.

That does not mean that each juror should pursue his own deliberations and judgement with no regard for the arguments and conclusions of his fellows, or that having reached a conclusion, he or she should obstinately adhere to it without a conscientious effort to test its validity by the views entertained by the other jurors.

I am not telling you what to do. I am going to send you back in. Follow that theory, that you will resolve yourselves to do your duty and follow the thought of other jurors whom, I am sure, are equally as wise and have heard the same evidence. You may return to the jury room, and I hope it has shed some light.

At 9:00 the jury returned and asked whether they were the sole judges of life and death, if they voted a murder one verdict. Upon receiving an affirmative answer, they continued deliberations and returned ten minutes later with a verdict of second degree murder.

The defendant alleges that the timing of the "Chip Smith" charge was improper because the jury had insufficient time to disagree and there was no sign of deadlock. The charge came five hours and forty-five minutes after the beginning of deliberation. The Second Circuit has not set minimum time limits that a judge must let the jury deliberate before the

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"Chip Smith" charge may be given. In United States v. Kenner, 354 F.2d 780 (2d Cir. 1965), cert. denied, 383 U.S. 958 (1966), the charge was given after three hours and forty-five minutes of deliberations and this was upheld. Id. at 758. In a later case a footnote said that the minimum limits appeared to have been set in Kenner. United States v. Barash, 412 F.2d 26, 32 n.11 (2d Cir.), cert. denied, 396 U.S. 832 (1969). However, a year later the giving of the "Chip Smith" charge after only two hours and fifty minutes of deliberations was upheld. United States v. Hynes, 424 F.2d 754 (2d Cir.), cert. denied, 399 U.S. 933 (1970). The court there held that the minimum time limit would be determined by the complexity of the trial issues. Id. at 758. In the present case, there was but one defendant and one charge. Considering the jury had sufficient time to discuss the case before the supplemental charge was given, the judge did not overstep his discretion.

Nor is it error for the trial court to give the "Chip Smith" charge without evidence of jury deadlock. In a recent case the Court of Appeals held it was not error for the trial court in a bank robbery prosecution to give a "Chip Smith" instruction after three hours of deliberation and no sign of a deadlock. United States v. Martinez, 446 F.2d 118 (2d Cir.), cert. denied, 404 U.S. 944 (1971). The court concluded that the giving of the charge before deadlock was not more coercive than after the deadlock occurs. Id. at 119. In fact, the Tenth Circuit considers the giving of a "Chip Smith" charge before a deadlock occurs to be less coercive than waiting until after the deadlock occurs. Burup v. United States, 371 F.2d 556, 558 (10th Cir.), cert. denied, 386 U.S. 1034 (1967). It seems difficult to understand how the instruction given before

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deadlock occurs is more coercive than if given after the deadlock develops. If there is no deadlock, there is no minority to coerce. Thus, the timing of the charge was no error.

A trial judge cannot coerce a verdict. Jenkins v. United States, 380 U.S. 445 (1965). The defendant has a right to an uncoerced jury. United States v. Sawyers, 423 F.2d 1355 (4th Cir. 1970). A coercive charge violates due process. United States v. Brown, 411 F.2d 930, 932 (7th Cir. 1969), cert. denied, 396 U.S. 1017 (1970). The failure of the defendant to receive a fair trial with a panel of impartial and indifferent jurors violates even the minimal standards of due process. Irvin v. Dowd, 366 U.S. 717 (1961). The issue is whether the instructions had a coercive effect.

It is necessary to view the circumstances and the complete context of the instruction in deciding whether it had a coercive effect on the jury. Jenkins v. United States, 380 U.S. 445, 446 (1965); Hale v. United States, 435 F.2d 737, 742 (5th Cir. 1970), cert. denied, 402 U.S. 976 (1971); United States v. Rao, 394 F.2d 354, 356 (2d Cir.), cert. denied, 393 U.S. 845 (1968). A statement that by itself may, when viewed as part of the total statement, be regarded as not coercive. Benscoter v. United States, 376 F.2d 49, 51 (10th Cir. 1967).

The statement by the trial judge in this case that, "I cannot let you leave before I have some sort of a verdict", comes close to the statement condemned in Jenkins, "You have got to reach a decision in this case". The statement by the trial court that "...I think you should be able to reach a verdict" has been judged as not coercive. United States v.

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Bowles, 428 F.2d 592, 596 (2d Cir.), cert. denied, 400 U.S. 928 (1970). The statement "now, this is not a difficult case for you to decide and this jury ought to reach a decision in this case" has also been judged as not coercive. Benscoter, supra at 51. There is not an absolute requirement that the jury be told of its right to disagree. Bowles, supra at 595. Such instruction is in fact improper.

There are several factors that differentiate the statement in this case from the one uttered in Jenkins. First, the jury was not deadlocked, there was no hint of a stalemate. Therefore, it was impossible to coerce a minority that did not exist. Secondly, the judge carefully explained to the jury that he was not trying to hurry their deliberation, that they should carefully consider the arguments. Thirdly, the jury continued deliberations for four hours after receiving the supplemental instructions. Evidence that the jury deliberated for a long time after receiving the instructions tends to prove that they did not believe the statements were coercive. United States v. Barash, 412 F.2d 26, 32 (2d Cir.), cert. denied, 396 U.S. 832 (1969). Finally, later instructions were given to the jury reminding them that the verdict must be the conclusion of each juror and not the mere acquiescence of his fellow juror.

The defendant also objects to the sentence by the trial court that "It would be an impossibility". What "it" refers to is unclear, but it can be construed as meaning that the jury would not be allowed to go home until a verdict has been reached. Ralls v. Manson, supra at 498 (Lumbard concurring). The reasons cited to hold the earlier statement non-coercive apply equally to this statement.

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The petitioner objects to the "Chip Smith" charge, alleging that it is coercive. The charge was first approved in Allen v. United States, 164 U.S. 492 (1896). It has been approved repeatedly since then. Kenner, supra; Hynes, supra; United States v. Jennings, 471 F.2d 1310 (2d Cir.), cert. denied, 411 U.S. 935 (1973). Regardless of the criticisms of some courts and commentators, the "Chip Smith" charge is permissible.

The purpose of the "Chip Smith" charge is to encourage jury agreement, without causing a juror to abandon a conscientious conviction. Bowles, supra at 596. It would be self-defeating to give a charge that did not encourage jury agreement. It is the task of the courts to draw the line between a charge that encourages and one that coerces.

To prevent coercion, recent cases within our district have required that the "Chip Smith" charge be supplemented with an "assurance in some form that a juror was not expected to abandon his conscientious convictions". Kenner, supra at 783. The test is whether the language is sufficiently clear that a juror ought not abandon a personal conviction. United States v. Bilotti, 380 F.2d 649, 654 (2d Cir.), cert. denied, 389 U.S. 944 (1967). The trial court did that here, saying that each juror must reach his own conclusion, not acquiescenting to the conclusions of other jurors.

The defense specifically objects to the language, "Follow that theory, that you will resolve yourselves to do your duty and follow the thoughts of other jurors, whom, I am sure are equally as wise and have heard the same evidence". Such a statement, without assuring the jury that their verdict was

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to be their own conclusion, could be seen as coercive. But, when the statement is viewed as a whole it is not significantly different than other statements allowed in the past. "...if the much larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of some men equally intelligent, equally honest as himself." Hynes, supra, at 757 n.2. "It certainly cannot be the law that each juror should not listen with deference to arguments and with a distrust of his own view, his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself." Kenner, supra, at 782 n.2. In view of these, the statement cannot be seen as error.

III. Right to Remain Silent

At the conclusion of the direct examination of Inspector McHenry by the state prosecutor, the following colloquy occurred:

Q: (by the prosecutor) Did there come a time when he (Ralls) received a call from anyone at the Hamden Police Department?

A: (McHenry) Yes.

Q: And who was it?

A: At 8:00 I received a call from Attorney Schaffel, who stated that he represented Mr. Ralls and wanted to speak with Mr. Ralls on the phone. I handed the phone to John Ralls and he spoke to Mr. Schaffel. When he got off the phone, he stated, on the advice of his attorney, he was not going to carry on any further conversation with the police. I respected his wishes and terminated any further interview with him.

Trial counsel for the petitioner did not object to this testimony. The Court, sua sponte, before cross-examination began, gave the jury the following instruction:

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THE COURT: Before Mr. DeMayo proceeds let me caution the jury that after speaking with his attorney, he has a perfect constitutional right not to discuss anything with the officers. It is not to mitigate (sic) against him. Go ahead, Mr. DeMayo.

The Supreme Court of the State of Connecticut considered whether this testimony infringed on Ralls' privilege against self-incrimination. They rejected his claim on the merits. State v. Ralls, 167 Conn. 408, 431 (1974).

Although Ralls' trial counsel did not object to this testimony, he is not precluded from presenting his claim in federal court on a theory of "deliberate by-pass". The Supreme Court has held that "if state courts have entertained the federal constitutional claim on the merits in a subsequent proceeding, notwithstanding the deliberate by-pass, the courts have no discretion to deny the applicant the habeas relief to which he is otherwise entitled". Lefkowitz v. Newsome, 420 U.S. 283, 292 n.5 (1975); Fay v. Noia, 372 U.S. 391, 439 (1963); Warden v. Hayden, 387 U.S. 294, 297 n.3 (1967); Malley v. Connecticut, 414 F. Supp. 1115 (D. Conn. 1976).

The petitioner bases his claim that his privilege against self-incrimination was violated partly on Miranda:

"In accord with our decision today it is impermissible to penalize an individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. The prosecution may not therefore, use at trial the fact that he stood mute or claimed his privilege in the face of accusation." Miranda v. Arizona, 384 U.S. 436, 468 n.37 (1966).

and partly on a recent Supreme Court case holding constitutionally invalid the use of such silence for impeachment purposes. Doyle v. Ohio, 426 U.S. 610 (1976); see United States v. Hale, 422 U.S. 171 (1975).

It can be assumed that the prosecutor intended Inspector

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McHenry to testify to the phone call from Attorney Schaffel to Mr. Ralls, and of the comment by Ralls that he would not carry on any further conversations with the police. It does not seem unfair to conclude that the testimony was brought forth by direction, not inadvertence.

The testimony that a defendant remained silent under questioning doesn't automatically create constitutional error. In some cases it is entirely proper, cf. United States v. Fairchild, 505 F.2d 1378, 1383 (5th Cir. 1975); Doyle v. Ohio, supra at 619 n.11 (1976). In each situation it is necessary to determine the purpose of the testimony and its fundamental fairness.

In this case Inspector McHenry had testified of conversations he had with the defendant at the police station. The purpose of the testimony was to explain why the conversation was terminated and that the defendant had an opportunity to speak to his lawyer.

This distinguishes this case from the cases cited by the petitioner. In such cases as United States v. Semensohn, 421 F.2d 1206 (2d Cir. 1970), Minor v. Black, 527 F.2d 1 (6th Cir.), cert. denied, 427 U.S. 904 (1976), the purpose of the testimony was to discredit the exculpatory statement made by the defendant at trial. Such purpose was not present here. In fact, it could not have been since Ralls did speak freely to the police and gave a full statement to McHenry.

The distinction is important because in the cases cited by the defendant the potential for prejudice is great while in this case there is little possibility for prejudice. In the cases cited by the petitioner the inference was that the

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defendant at trial was lying, since he would have told the story at the arrest if it were true. Since Ralls spoke to the police at arrest and have a statement, this inference is out of place.

Whatever possible prejudice was created by the testimony was lessened by the cautionary statement by the trial judge afterwards. Although cautionary statements do not magically eliminate all prejudice created, in some situations it may be effective:

"Of course, corrective statements must be considered within their context, for some trial errors have only a marginal prejudicial impact when viewed against the background of the case as a whole and may be cured by appropriate instructions." Semensohn, supra at 1208.

This case is one in which a corrective statement is helpful as the prejudice present is slight. It functions to lessen the possibility of prejudice arising from the testimony.

The testimony did not create constitutional error, as it was not fundamentally unfair to the defendant.

IV. Disclosure of Petitioner's Criminal Acts

The defendant claims that the admission of the fingerprint card into evidence, insinuating that he had a prior criminal record denied him his right to a fair trial under the Fourteenth Amendment. To obtain relief in a federal habeas corpus proceeding the state prisoner must show a constitutional injury. Jones v. Swenson, 469 F.2d 535, 538 (8th Cir. 1972); United States v. Fay, 350 F.2d 400, 401 (2d Cir. 1965). It is not enough that there is error in the state court, the error must be of constitutional dimensions. Jones v. Haskins, 459 F.2d 479 (6th Cir. 1972).

The Supreme Court in Spencer v. Texas, 385 U.S. 554 (1967)

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held that a state procedure where the jury was told of prior convictions of the defendant was not violative of due process when the judge warned the jury that such information could be used only for sentencing purposes, not for deciding the guilt or innocence of the defendant. To decide that instructions by the court are inadequate to protect the rights of the defendant would threaten large areas of trial jurisprudence. Spencer, supra at 562. In Michelson v. United States, 335 U.S. 469 (1948), the Supreme Court recognized that similar instructions "are no more difficult to comprehend or apply than those upon various other subjects..." Michelson, supra at 485.

The trial judge in this case cautioned the jury twice that any evidence of past crimes was not to be given any weight. The court could do little more, short of declaring a mistrial, to protect the rights of the defendant.

United States v. Harrington, 490 F.2d 487 (2d Cir. 1973) does not dictate a different decision, for there the Court of Appeals was using its supervisory powers over the admission of evidence in a federal court. Ralls v. Manson, 503 F.2d 491, 497 (2d Cir. 1974) (Lumbard concurring). As previously explained, when a state prisoner habeas petition is presented, as distinguished from that of a federal prisoner, the standard is different one when determining whether the defendant's constitutional rights have been violated.

While the admission of such fingerprint cards is discouraged, such an incident during a trial in which the jury is properly advised and cautioned does not rise to constitutional stature, and the petition on this ground is denied.

A-17

V. Hearsay Testimony

Petitioner claims that certain evidence was improperly admitted as hearsay. The issue was raised to the State Supreme Court. That court refused to review because of the failure of defense counsel to take an exception.

Errors in a state court's evidentiary rulings are not grounds for habeas corpus relief "absent a showing of deprivation of some specific due process right or fundamental fairness." United States ex. rel. Serrano v. Smith, 394 F. Supp. 391, 392 (S.D.N.Y. 1975); United States ex. rel. Clark v. Zelker, 321 F. Supp. 1085 (S.D.N.Y. 1971); United States ex. rel. Hardy v. McMann, 292 F. Supp. 191 (S.D.N.Y. 1968).

The statement was hearsay and should have been excluded. However, admission of such testimony did not deprive the defendant of a fundamental fair trial. The hearsay was relatively unimportant, especially in view of the warning given the jury during the charge to consider the immaturity of children in giving weight to their testimony. In addition, there was a great deal of independent evidence incriminating the defendant. The statement was an insignificant part of the state's case.

VI. Miranda Warnings

The petitioner in arguing before the Connecticut Supreme Court alleged that the Miranda warnings given him were inadequate and thus all statements made by him should be suppressed. The court ruled against these allegations. State v. Ralls, 167 Conn. 408, 428, 429 (1974).

The petitioner now alleges that the Miranda rights were never given, and alternatively, that there was no waiver by the defendant of these rights. This is a new and distinct

A-18

claim from the one presented to the state court.

Under Title 28, Sec. 2254, the application for habeas corpus will not be reviewed by the federal courts if the applicant has not exhausted his state court remedies. This means simply that "the substance of a federal habeas corpus claim must first be presented to the state courts". Picard v. Connor, 404 U.S. 270, 278 (1971). This, the petitioner in this case has failed to do. It would therefore be premature for this court to consider the merits of the petitioners claim.

VII. Assistance of Counsel

The petitioner alleges that he was denied effective assistance of counsel. His petition lists eight omissions made by trial counsel. In his memorandum in support of his application for habeas corpus relief, filed in this court on July 27, 1976, the petitioner lists fifteen omissions.

While appealing the conviction in the State Supreme Court, the petitioner presented five of the omissions in support of his Sixth Amendment claim. The remaining allegations in both the petition and memorandum are raised here for the first time.

Picard, requires more than a general claim be made to the state court, before the exhaustion of state remedy requirement be satisfied. "Only if the state courts have had the first opportunity to hear the claim sought to be vindicated in a federal habeas proceeding does it make sense to speak of the exhaustion of state remedies. Accordingly, we have required a state prisoner to present the state courts with the same claim he urges upon the federal courts." Picard, supra at 276.

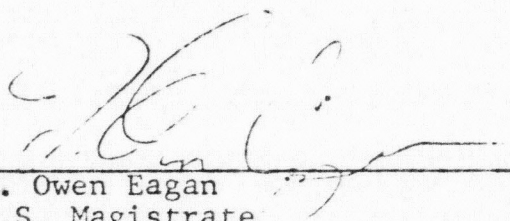
A-19

(17)

The petitioner has not given the state court the opportunity to fully consider his arguments. Therefore, this court will not consider the merits of this claim until the state court has ruled on the issue.

The various claims presented to this Court by the petitioner are without merit; therefore, the petition is denied.

Date at Hartford, Connecticut, this 29th day of July 1977.


F. Owen Eagan
U.S. Magistrate

SO ORDERED:

T. Emmet Clarie, Chief
United States District Court
Judge

DATED: _____

A-20

FILED

AUG 17 4 36 PM '77

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN RALLS

:

VS.

:

CIVIL NO. H-75-107

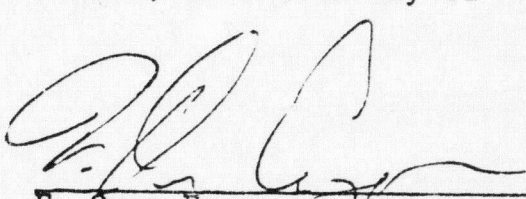
JOHN R. MANSON, COMMISSIONER, :
CONNECTICUT DEPARTMENT OF :
CORRECTION :

CORRECTION TO MEMORANDUM OF DECISION
FILED JULY 29, 1977

The citation in Paragraph 3 on page 11 of the Memorandum of Decision filed July 29, 1977, should read as follows:

"Malley v. Connecticut, 414 F. Supp. 1115
(D. Conn. 1976), rev'd on other grounds,
547 F.2d 25 (2d Cir. 1976)."

Dated at Hartford, Connecticut, this 17th day of
August 1977.


F. Owen Eagan
United States Magistrate

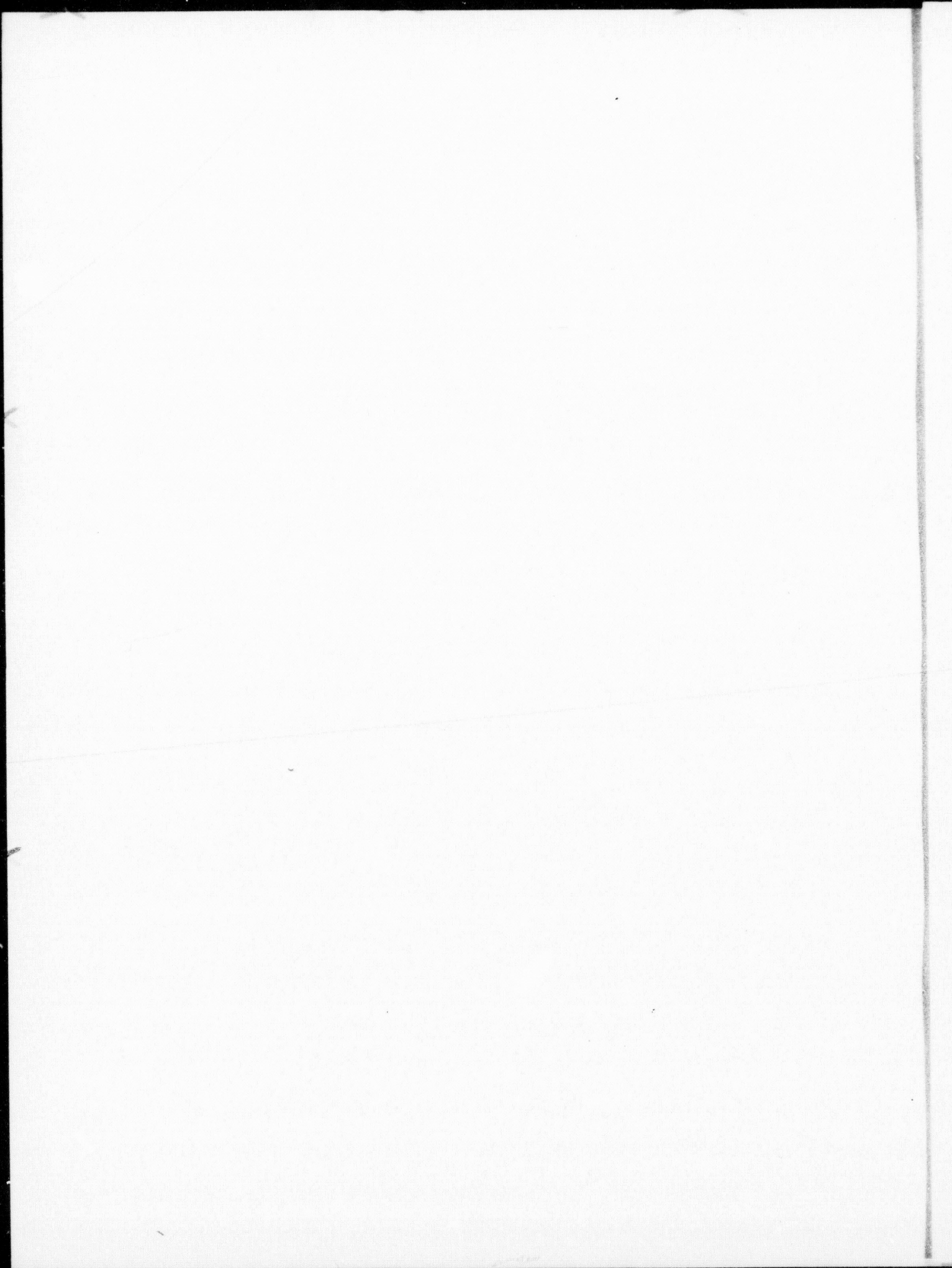


EXHIBIT C: PETITION FOR WRIT OF HABEAS CORPUS

L

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

A-21

JOHN RALLS,

PETITIONER,

VS.

JOHN R. MANSON,
Commissioner,
Connecticut Department
of Correction,

RESPONDENT.

1A
H 75 / 107

CIVIL ACTION NO. _____

PETITION FOR WRIT OF HABEAS CORPUS

1. The jurisdiction of this Court is invoked under 28 U.S.C. §2241 (1964) to release the petitioner from custody of the respondent in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

2. The Petitioner, John Ralls, hereby applies for a writ of habeas corpus, and, in support thereof, respectfully represents that:

A. He is now being held and confined in the State Correctional Institution at Somers, Connecticut, by the respondent.

B. This confinement is illegal for the following reasons:

(1) On June 15, 1970, he was indicted by a Connecticut grand jury at New Haven, Connecticut, for the crime of Murder in the First Degree on March 1, 1970.

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(2) Following a jury trial in the Connecticut Superior Court at New Haven, he was found guilty of Murder in the Second Degree at 9:15 P.M. on November 17, 1970.

(3) On December 11, 1970, upon such conviction, he was sentenced to life imprisonment.

(4) Throughout the aforesaid trial and during the period between his arrest and the trial, he was represented by the Public Defender of the New Haven Superior Court.

(5) He appealed his conviction to the Connecticut Supreme Court and a Special Public Defender was appointed to represent him upon such appeal.

(6) While his appeal was pending, he petitioned this Court for a writ of habeas corpus and this court appointed counsel to represent him in that proceeding.

(7) On May 7, 1974, in Civil Action No. H-205, this Court (Blumenfeld, J.) found constitutional error in his state court trial and ordered him released from custody if not retried within a stated period. Ralls v. Manson, 375 F. Supp. 1271.

(8) Judge Blumenfeld's said decision was subsequently reversed on the ground that the Petitioner had not exhausted his state court remedies. Ralls v. Manson, 503 F.2d 491.

(9) On December 31, 1974, the Connecticut Supreme Court affirmed his conviction, one Justice dissenting.

BEST COPY AVAILABLE

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(10) Annexed hereto as EXHIBIT A is a copy of the Record on Petitioner's appeal to the Connecticut Supreme Court.

(11) Annexed hereto as EXHIBIT B is a copy of Petitioner's brief on his appeal to the Connecticut Supreme Court.

(12) Annexed hereto as EXHIBIT C is a copy of the Appendix to Petitioner's brief on his appeal to the Connecticut Supreme Court, consisting of a complete transcript of the testimony at his state court trial.

(13) Annexed hereto as EXHIBIT D is a copy of the decision of the Connecticut Supreme Court affirming Petitioner's conviction.

(14) The Public Defender who represented the Petitioner at his state court trial failed to provide him with adequate or effective assistance of counsel, in that: (a) He conducted no, or virtually no, investigation of the facts of the case prior to trial; (b) He filed no pre-trial motions of any kind on Petitioner's behalf, thereby waiving important state and federal rights; (c) He did not meet the Petitioner until the day jury selection began; (d) He failed to object to the admission of inadmissible and prejudicial evidence at the Petitioner's trial, without which evidence the Petitioner could not have been convicted; (e) He presented no evidence on the Petitioner's behalf at the said trial; (f) He filed no written motions at any time during the Petitioner's trial; (g) He failed to object to prejudicial and legally erroneous portions of the trial court's charge to the jury; (g) While the jury

A-24

was deliberating in this case in which the State was asking it to impose the death penalty, he left the courthouse to attend the opera, leaving the Petitioner unrepresented while the court at various times re-charged the jury and when the jury returned its verdict.

C. Confinement of the Petitioner under the aforesaid circumstances violates his right to due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution, in that:

(1) Admission into evidence at his trial of his State Police fingerprint card denied him the presumption of innocence and a fair trial.

(2) The trial court's instructions to the jury denied him his right to trial by an uncoerced jury.

(3) Throughout the trial and the pretrial proceedings, he was denied effective assistance of counsel.

(4) Admission into evidence at his trial of the hearsay testimony of one Jacquelyn Ralls denied him the right to confront his accusers.

(5) Admission into evidence at his trial of evidence that he had committed other unrelated crimes denied him the presumption of innocence and a fair trial.

(6) Statements he made to arresting officers in the absence of counsel were admitted into evidence against him at his trial in violation of his rights under the Fifth, Sixth and Fourteenth Amendments.

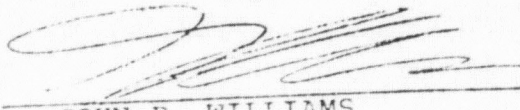
A-25

5

WHEREFORE Petitioner prays that a writ of habeas corpus be issued to bring him before this Court that justice may be done.

JOHN RALLS, Petitioner

BY


JOHN R. WILLIAMS
His Attorney

Dated: March 31, 1975

EXHIBIT D: RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

A-26

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

JOHN RALLS,

Petitioner,

vs.

JOHN MANSON,

Respondent.

:

:

:

:

:

CIVIL NO. H75-107

APRIL 17, 1975

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

1. The Respondent admits the portion of paragraph 1 of the Petition which alleges that the jurisdiction of this court is invoked under 28 U.S.C. §2241. The Respondent denies the remaining portion of paragraph 1 which alleges that the Petitioner's confinement is in violation of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.
2. The Respondent answers paragraph 2 of the Petition and the several sub-paragraphs thereunder in the following manner:

A. The Petitioner's confinement in the custody of the Respondent at the Connecticut Correctional Institution, Somers, is admitted.

B. The illegality of the Petitioner's confinement is denied and as to the specific allegations of illegality set forth in paragraphs 2B(1)-(14), inclusive, the Respondent pleads as follows:

(1) He admits that on June 15, 1970, a Connecticut grand jury of New Haven, Connecticut, indicted the Petitioner for the crime of Murder in the First Degree committed on March 1, 1970.

(2) He admits that a jury convicted the Petitioner of Murder in the Second Degree at 9:30 p.m. on November 17, 1970.

(3) He admits that the Petitioner was sentenced to life

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imprisonment on December 11, 1970.

(4) He admits that the Public Defender's office in New Haven County represented the Petitioner subsequent to his arrest, through the trial proceedings and until some time after the Petitioner had appealed his conviction to the Supreme Court of Connecticut.

(5) He admits that after the Petitioner had appealed his conviction to the Connecticut Supreme Court, he requested appointment of new counsel and the State Courts appointed a Special Public Defender to represent him on the appeal.

(6) He admits that while the State appeal was pending, the Petitioner made application to this Court for a Writ of Habeas Corpus and that this Court appointed counsel to represent him in that habeas proceeding.

(7) He admits that on May 7, 1974, in that habeas action (Civil No. H-205), this court (Blumenfeld, J.), upon consideration of two of the five substantive claims urged by the Petitioner, found constitutional error and ordered the Petitioner's release from State custody if he were not afforded a new trial within 60 days of his decision. Ralls v. Manson, 375 F. Supp. 1271, 1286, 1298.

(8) He admits that the decision of this Court (Blumenfeld, J.) was subsequently reversed and the Petitioner's former petition was dismissed by the Court of Appeals for the Second Circuit in a per curiam opinion holding that, because of the direct appeal then pending, the Petitioner had not exhausted State remedies which per curiam opinion did not discuss the merits of the Petitioner's substantive claims, Ralls v. Manson, 503 F.2d 491; and adds hereto that one of the three circuit judges in a concurring opinion felt that the two substantive issues on which this Court had based its decision fell short of being errors.

A-28

of constitutional dimension. 503 F.2d at 496.

(9) He admits that on December 31, 1974, the Connecticut Supreme Court affirmed the Petitioner's convictions with one Justice dissenting.

(10) He admits that Exhibit A is a copy of the Record on Petitioner's appeal to the Connecticut Supreme Court.

(11) He admits that Exhibit B is a copy of the Petitioner's brief on his appeal to the Connecticut Supreme Court.

(12) He admits that Exhibit C is a copy of the appendix to Petitioner's brief on his appeal to the Connecticut Supreme Court.

(13) He admits that Exhibit D is a copy of the decision of the Connecticut Supreme Court affirming Petitioner's conviction.

(14) The Respondent denies that the Public Defender's Office for New Haven County failed to provide the Petitioner with effective assistance of counsel and as to the specific allegations of 14(a)-(h), inclusive, the Respondent answers as follows:

(14a) He denies that the Public Defender's Office conducted no, or virtually no, pre-trial investigation of the facts of the case.

(14b) He admits that the Public Defender filed few, if any, pre-trial motions in the State proceedings, but denies that such inactivity waived any important State and Federal rights.

(14c) He denies that the Public Defender or his personnel did not meet the Petitioner until the day selection of the Petitioner's jury began.

(14d) He denies that the Public Defender who tried the case failed to object to the admission of inadmissible and prejudicial evidence, without which evidence the Petitioner could

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not have been convicted.

(14e) He admits that the Public Defender who tried the case called no witnesses of his own, but denies that no evidence was presented in the Petitioner's behalf, in that evidence was elicited, in the Petitioner's behalf, in the cross-examination of the State witnesses.

(14f) He admits that the Public Defender's Office filed no written motions during the Petitioner's trial, but denies that the failure to do so constituted ineffective or inadequate assistance of counsel.

(14g) He denies that the Public Defender failed to object to prejudicial and legally erroneous portions of the instructions to the jury and, further, denies that such instructions were prejudicial or legally erroneous.

(14h) He admits that during the jury's deliberations the Public Defender who tried the case left the courthouse and was absent during the remainder of the deliberations and the rendition of the verdict, but he denies that the Public Defender's departure left the petitioner unattended because of the presence of an assistant Public Defender. He admits that during the Public Defender's absence, instructions as to the law and not as to factual issues, were given to the jury.

C. In answer to the allegations of Paragraph C, the Respondent denies that the Petitioner's rights under the Fourteenth Amendment were violated and with regard to the specific purported violations of due process enumerated in subparagraphs (1)-(6), inclusive, the Respondent answers as follows:

(1) He denies that the admission into evidence at the State trial of the fingerprint card denied the Petitioner the presumption of innocence and a fair trial.

A-30

(2) He denies that the trial court's instructions amounted to a coercion of the jury.

(3) He denies that the Petitioner did not have effective assistance of counsel.

(4) He denies that the Petitioner was deprived of the right of confrontation or that inadmissible hearsay was admitted into evidence during the State's examination of Jacqueline Rawls.

(5) He denies that admission into evidence of criminal activity other than the specific crime then being tried deprived the Petitioner of the presumption of innocence.

(6) He denies that the statements which the Petitioner made to arresting police officers in the absence of counsel and which statements were admitted into evidence at his trial, violated the Petitioner's rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

BY WAY OF AFFIRMATIVE DEFENSE

FIRST

1. Any error which may have occurred on the Petitioner's trial was harmless in view of the overwhelming weight of the evidence indicative of the Petitioner's guilt.

SECOND

1. The Petitioner has sought to include among his claims that he was denied effective assistance of counsel certain allegations that the Public Defender was derelict in his failure to investigate his case, including a failure to interview him until the empaneling of the jury.
2. These allegations of the Public Defender's pre-trial investigative defaults have not been made the basis of any claim in the State courts and, consequently, as to them, State remedies

A-31

have not been exhausted.

3. The State has an existing and available procedure through a Writ of Habeas Corpus to test the issue of whether these allegations can be factually substantiated and whether they constitute a denial of the Petitioner's rights under the Sixth and Fourteenth Amendments.

EXHIBITS

Submitted with this Return, as Respondent's Exhibit I, is the verbatim trial transcript in the case of the State of Connecticut v. John Ralls.

JOHN R. MANSON, Commissioner
of Corrections of the State
of Connecticut
RESPONDENT

By Ernest J. Diette, Jr.
ERNEST J. DIETTE, JR.
ASSISTANT STATE'S ATTORNEY
235 CHURCH STREET
NEW HAVEN, CONNECTICUT 06510

Jerrold H. Barnett
JERROLD H. BARNETT
ASSISTANT STATE'S ATTORNEY
CHIEF STATE'S ATTORNEY'S OFFICE
DRAWER H, AMITY STATION
NEW HAVEN, CONNECTICUT 06525

CERTIFICATION

This is to certify that a copy of the foregoing return was sent to ~~JOHN MANSON, JR., 265 CHURCH STREET, NEW HAVEN, CONNECTICUT 06510~~; John R. Williams, 265 Church Street, New Haven, Connecticut 06510 and David Golub, University of Connecticut Law Clinic, West Hartford, Connecticut, either or both of whom have been appointed counsel for the Petitioner by this Court on April 2, 1975.

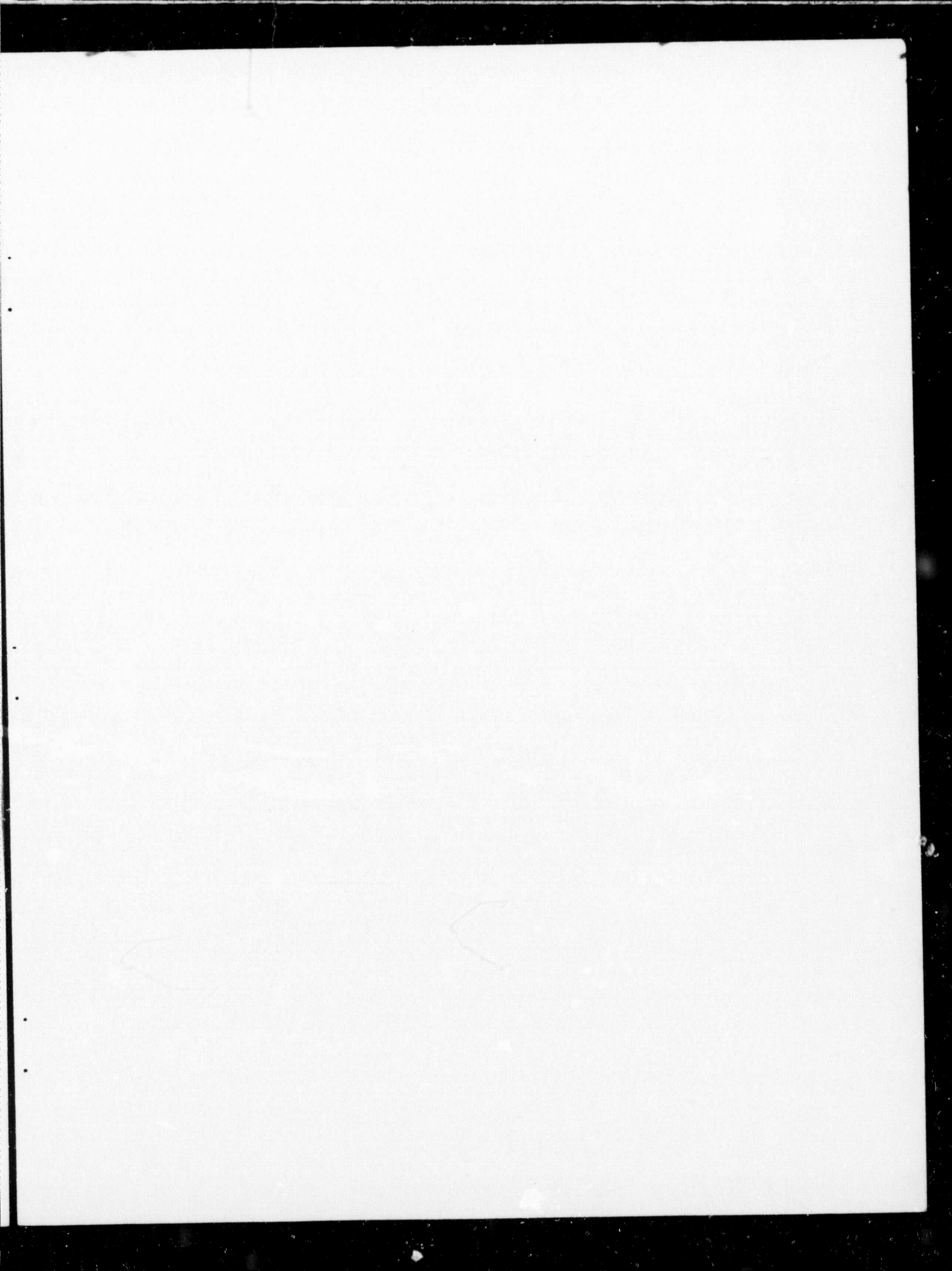
Copies of Respondent's Exhibit I have not been sent to counsel for the reasons that both of them have represented the Peti-

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tioner in prior proceedings in this Court and the State Supreme Court and already have copies of this Exhibit, which is the trial transcript.

Ernest J. Diette, Jr.

ERNEST J. DIETTE, JR.
ASSISTANT STATE'S ATTORNEY



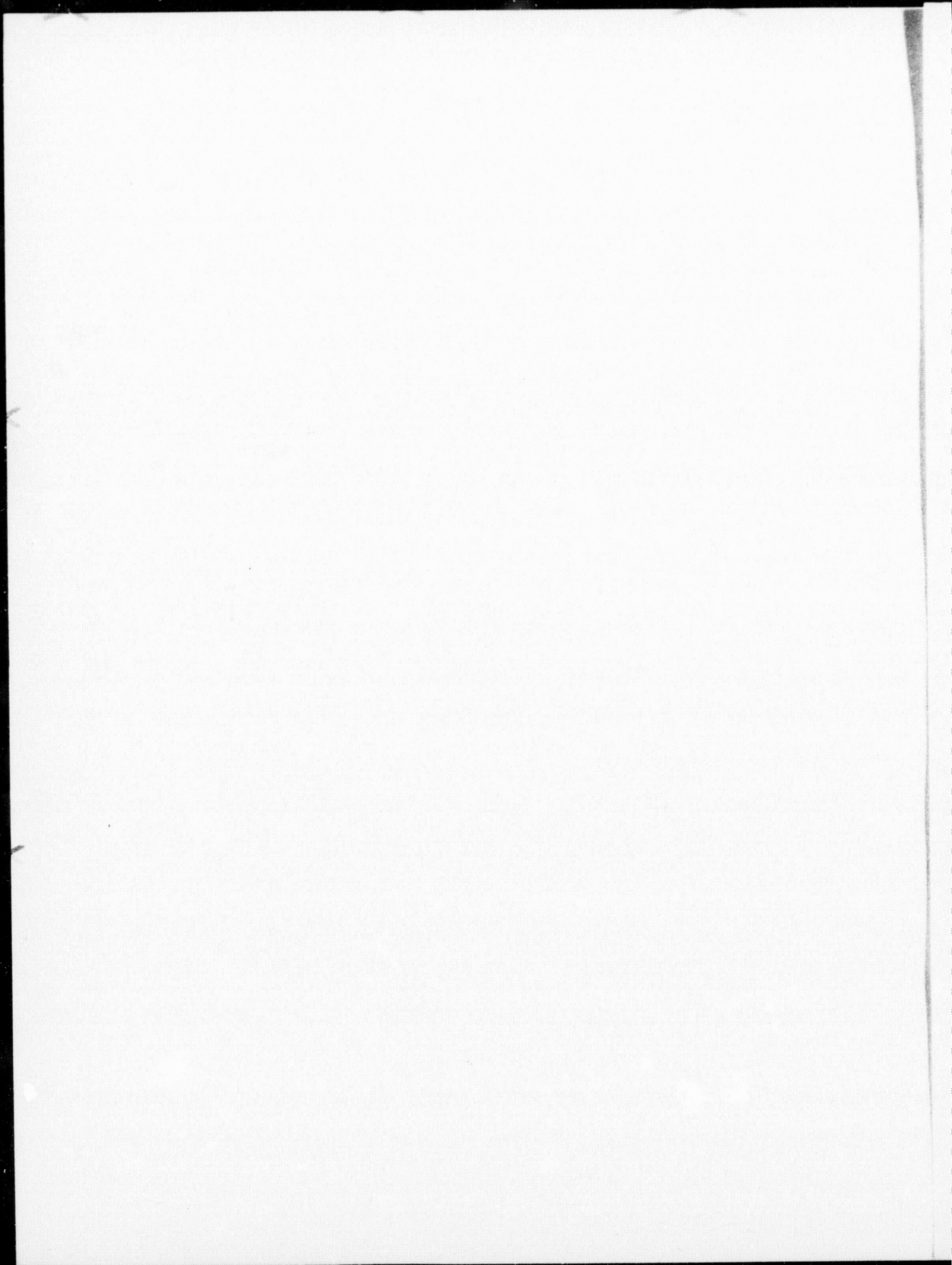


EXHIBIT E: STIPULATION

A-33

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT JAN 31 1976

U.S. DISTRICT COURT
HARTFORD, CONN.

JOHN RALLS

:

Civ. No. H-75-107

v.

:

STIPULATION

JOHN MANSON

:

The parties hereto hereby agree that testimony in the above-captioned action shall be received by deposition or, if neither party objects, by affidavit of the witness, in lieu of an in-court evidentiary hearing.

Dated at Stamford, Connecticut, this 31st day of December, 1975, and at New Haven, Connecticut, this 5th day of January, 1976, respectively, by

For Petitioner:

David S. Golub

DAVID S. GOLUB, Esq.
His Attorney

For Respondent:

Ernest Diette

ERNEST DIETTE, Esq.
Assistant State's Attorney

By: G. M. [unclear]

clerk



EXHIBIT F: INTERVIEW OF DEFENDANT FORM

A-34

INTERVIEW OF DEFENDANT

NAME John Rallo PHONE (HOME) (BUSINESS)

ADDRESS 109 Lilac N.H. HOW LONG? 2 mos

PREVIOUS ADDRESS
113 Shepherd St

~~ALIAS OR NICKNAME~~

AGE 33 DATE OF BIRTH 1 June 37 PLACE OF BIRTH N.H.

SEX ☒ MALE ☐ FEMALE RACE W ☒ N ☐ OTHER

CURRENT CHARGES murder

PREVIOUS CHARGES

BOND no bond BONDSMAN

no bond hearing

WHO MIGHT BE CONTACTED FOR BOND PREMIUM?

MARITAL STATUS ☒ MARRIED ☐ SINGLE ☐ DIVORCED ☐ SEPARATED

SPOUSE'S NAME Gwendolyn

ADDRESS ?

PHONE

CHILDREN (NAMES)

AGES

FATHER'S NAME Benjamin

ADDRESS 109 Lilac

PHONE

MOTHER'S NAME Ada

ADDRESS

PHONE

A-35

CHIEF RELATIVE AND FRIENDS

Apparently you have talked w this man already.
But he has questions:

"DeMaio told me will not go on ^{July} 11/4/68 because
of bad judge I don't want to wait I want to know what
going on. Have they investigated, found witnesses?"

Wants information on whether or not you have
investigated his witnesses.

I believe he is innocent. If his witnesses back him up, should be O.K.

May have illegal arrest question: not warned of rights unt
station house, that was questioned at length in car to station. Claims Lt.
Rhone lied to grand jury when he testified as to alleged statements John made to
police.

4-36
ARE YOU PRESENTLY EMPLOYED

UNEMPLOYED

RETIRED

OTHER

US Chemical, Cheshire

PUBLIC ASSISTANCE

NAME OF EMPLOYER

ADDRESS OF EMPLOYER

OCCUPATION

production supervisor

IMMEDIATE SUPERVISOR

LENGTH OF TIME EMPLOYED

AMOUNT OF PAY PER DAY \$ _____, WEEK \$ _____, OR MONTH \$ _____.

EDUCATION

LAST GRADE COMPLETED

12th grade

SCHOOL No Haven High

CITY

STATE Wilkes Tech, Meriden

IS THERE ANYONE WHO WOULD FAVORABLY TESTIFY AS TO YOUR CHARACTER?

David Campbell 42 S.E. Drive, N.H.

HAVE YOU SERVED IN ARMED FORCES?

(Yes)

No

Branch A.F.

Serial No. 12472202

Highest rank

A2

Dates: From Jan 55 To Nov 58 From To

COMBAT DUTY

WHERE

WHEN

CITATIONS, IF ANY? No

Proof

TYPE OF DISCHARGE Honorable

MEDICAL RECORD

FAMILY DOCTOR

PRESENTLY OR RECENTLY UNDER DOCTOR'S CARE?

WHERE

WHEN

HISTORY OF VENEREAL DISEASE?

(Details)

ANY TRAUMATIC INJURIES, MENTAL OBSERVATION OR PSYCHIATRIC CARE?

No

GENERAL

ARE YOU AN ALCOHOLIC?

Yes

No

AA Sponsor:

Local Chapter

Other

Hospital treatment(s)

HAVE YOU EVER USED NARCOTICS?

Yes

No

How Long?

Type

Most recent use

Hospital treatment

DO YOU THINK THERE IS ANYTHING WRONG WITH YOU MENTALLY? (Details)

No

CIRCUMSTANCES OF ARREST

1. When arrested? *Mar 4, 70* Date: Time: *5:00 - 5:30*
2. Where arrested? (exact location) *in W. Haven, at Stella Bowen's house.*
3. What were you doing at the time of your arrest?
4. Were you shown a warrant or told a warrant was outstanding for the arrest? *visiting Sheila, doesn't know how found there. Did - see one.*
5. What was said to you by the arresting officer at the time of the arrest? *Came to house, knew I was there, said I was under cover.*
6. What did you say to the officer at the time of the arrest? *In yard, standing W. Haven, police together.*
7. Where were you taken after your arrest? *Taken to W. Haven station house.*
8. What, if anything, was taken after your arrest?
9. Were you searched? Yes No Place of search *found nothing.*
10. What happened there?

38
11. Has anyone been asked to identify you?

Yes

No

12. Who identified you, if you know?

13. Have you at any time admitted to the police or anyone of being involved in any way in the offense or offenses with which you have been charged?

Yes

No

next:

They asked me where I had been. I said around. They asked if I knew Barbara Hane? I knew her she's my mother-in-law. They asked why I hid it. I told them I didn't do anything. They asked where gun was. I said I didn't own a gun. They kept asking if I was in a car, I wouldn't say anything. Last thing I told them was that I knew her Sunday. At Grand Jury, Lt. Rhone asked about alleged statements I made in bird yard jury testimony. I was not warned of rights until we got to station. All questioning prior, at home in car, was not warned. At station Tom Schaller called, warned me not to say anything. After that I refused [to say anything]*

*See original, included in Record on Appeal.

14. If so, what was the exact wording of your oral or written statement?

15. What were the circumstances surrounding this statement?

16. What evidence did the police tell you they had that would link you with this crime?

Mother-in-law supposedly lied later 10:11 am Sunday; I was last person seen w her alive. That is only connection later me & crime. Lab found my thumb print on it went window, but no other prints on whole car.

17. Were there any other persons arrested at the time that you were arrested? Give their names and addresses.

No one else arrested or charged.

18. Do you know any witness or witnesses who know that you were not involved in this offense? If so, give their names and addresses.

I went to West Haven it after leaving mother-in-law. Should say I arrived a little after 10:15 am. A couple other people were at house. All have to check w them to see if they want to be involved.

19. After your arrest, were you represented by an attorney at any time?

Nothing w Schaffer after initial phone call.

Yes

No

20. If so, give his name and address.

21. Do you know the complaining witness?

Yes

No

22. Who is it?

23. How long have you known him?

24. Did you appear before a police line-up? (Give details)

25. ~~Board over~~

*Did not go to grand jury 8 Jan
Plea 30 Jan, not guilty.*

A-40

ARRESTS:

CHARGE

DATE _____

PLACE

1. BC of p, a number, doesn't remember most recent.

2. _____
3. _____
4. _____
5. _____
6. _____

CONVICTIONS:

CHARGE

DATE _____

PLACE

1. Same as above

2. _____
3. _____
4. _____
5. _____

PAROLE

TIME OWED

PROBATION OFFICER

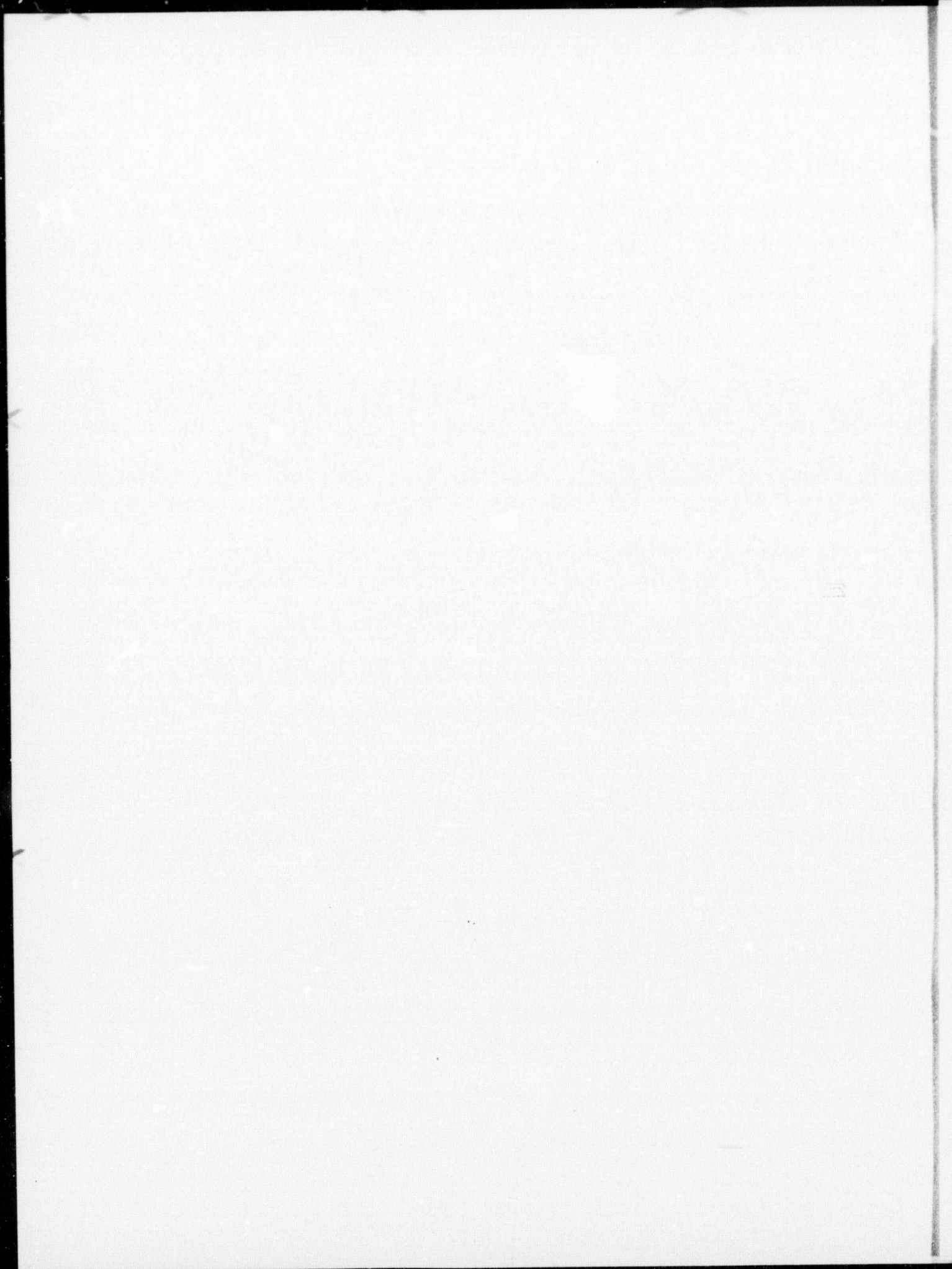


EXHIBIT G: LETTER FROM JOHN RALLS TO ANTHONY DEMAYO
5/13/70

A-41

PETITIONER'S EXHIBIT B
(Letter from John Ralls
to Anthony DeMayo, 5/13/70)

VISITING HOURS — IMMEDIATE FAMILY ONLY

- ☐ WEST WING & WEST WING ANNEX —
Friday & Saturday — 1:15 p.m. to 3:15 p.m.
 - ☒ EAST WING —
Sunday & Monday — 1:15 p.m. to 3:15 p.m.
- ALL VISITORS ALLOWED 15 MINUTES

THE NAME AND ADDRESS OF THE PERSON
TO WHOM THIS LETTER IS BEING SENT must
be written entirely within the box below.

PUBLIC DEFENDER W. DEMAYO
169 CHURCH STREET
NEW HAVEN, CONN.

NAME OF SENDER JOHN RALLS	INMATE No. 3707
COMMUNITY CORRECTIONAL CENTER — NEW HAVEN 245 Whalley Avenue New Haven, Connecticut 06511	
CELL No. 170	DATE 5/13/70

DO NOT WRITE HERE
CENSORED BY 11

NO CASH OR PERSONAL CHECKS ACCEPTED
SEND ONLY BANK OR POSTAL MONEY
ORDERS

ALL INCOMING MAIL TO INMATES MUST SHOW INMATE NUMBER

WRITE LETTER BELOW THIS LINE AND ON REVERSE SIDE

Attention Mr. DeMayo

Dear Sir, I am writing to you about my case
which I hope by now you are familiar with. The last
time I spoke with you was on April 3, 1970 or some-
where around there. According to you, you were going
to check on matters and in return have someone
from your office or either you or your man going to
be in touch with me one way or the other. Now I
realize you are a very busy man and my case is not
the only one you are handling. But, look, does it
take a month and a half to inform me as to
what the situation might be? I have also approached
the Commissioner as to the delay and was
told by him he had contacted you and that in a
matter of days someone would be here to see me and
get me to court. This was the surprise. I know you
can't understand my position as it appears to
me someone is dragging their feet in my support. Also
it would appear as if I am being taken by you.

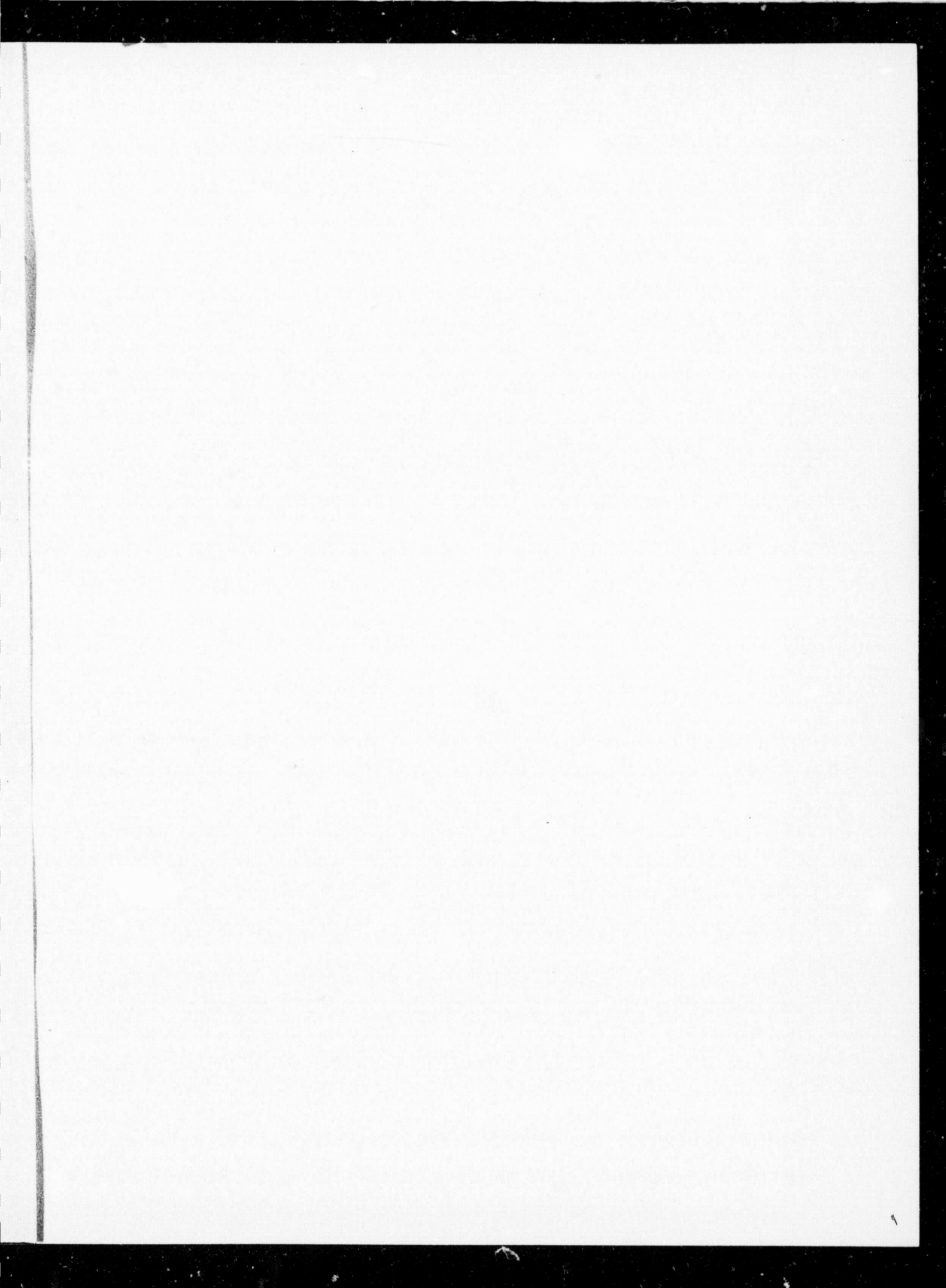
A-42

though the ~~time~~ name is satirically suited to my
your shoulders or that I am being sarcastic in any
way. The only thing I hope for is some action to take
place where I can go before the court have my
innocence proven so I can be released so my
damages I hope I am getting your name cleared up.
I would appreciate your attention and help in this
matter. Please let me hear from you as soon as
possible. Thank you very kindly.

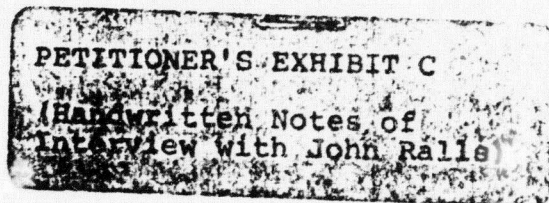
Yours Truly
John Hall

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EXHIBIT H: HANDWRITTEN NOTES OF INTERVIEW WITH
JOHN RALLS



A-43



PLF's C-4 C-5
1/12/71
SS

John Ralls

With mother-in-law in car
on Sunday morning. Went with
her to get clothes for his kids
for Sunday school (they (kids) were
at his mother's). Left mother-in-law
in car at his mother's house.

~~She said then~~. When he came
out of house Richard (?) Carter
was there in car talking to
mother-in-law. All spoke for
about 15 min. Then she

A-44

took him to West Haven
to get his car at "Dunkin Donuts".
Got ^{out} of car & she left. Never
saw her again. Got to Sheelo's
house about 10:00am 10:10.

Sheila's husband was there at
time. Stayed about $\frac{1}{2}$ hr.
Owed him \$400⁰⁰. Paid him
\$35⁰⁰ at that time. Talked
for a while. ~~But~~ They were in
bed when he arrived. Went
to mother's afterwards. Arrived
about 11:00. No one home.
Had his own key. Took bath,
changed clothes, had beer.
Went to brother's house. Arrived
about 1:00 P.M.

A-46

at brother's house and

10: P.M. when Butch (bottle-in-hand)

called to say mother-in-law

found dead + eyes lookin
for Ralls.

Arrest

Arrested after Wed. or Thurs.
at Shalos' house. He opened
door to ~~let~~ let Rhone in.

Search house for about 10 min
Then put him in car. ~~Rhone~~
~~to~~ Taken to W.H. police
Station. Booked & mugged
at W.H. There about 3/4 hour.

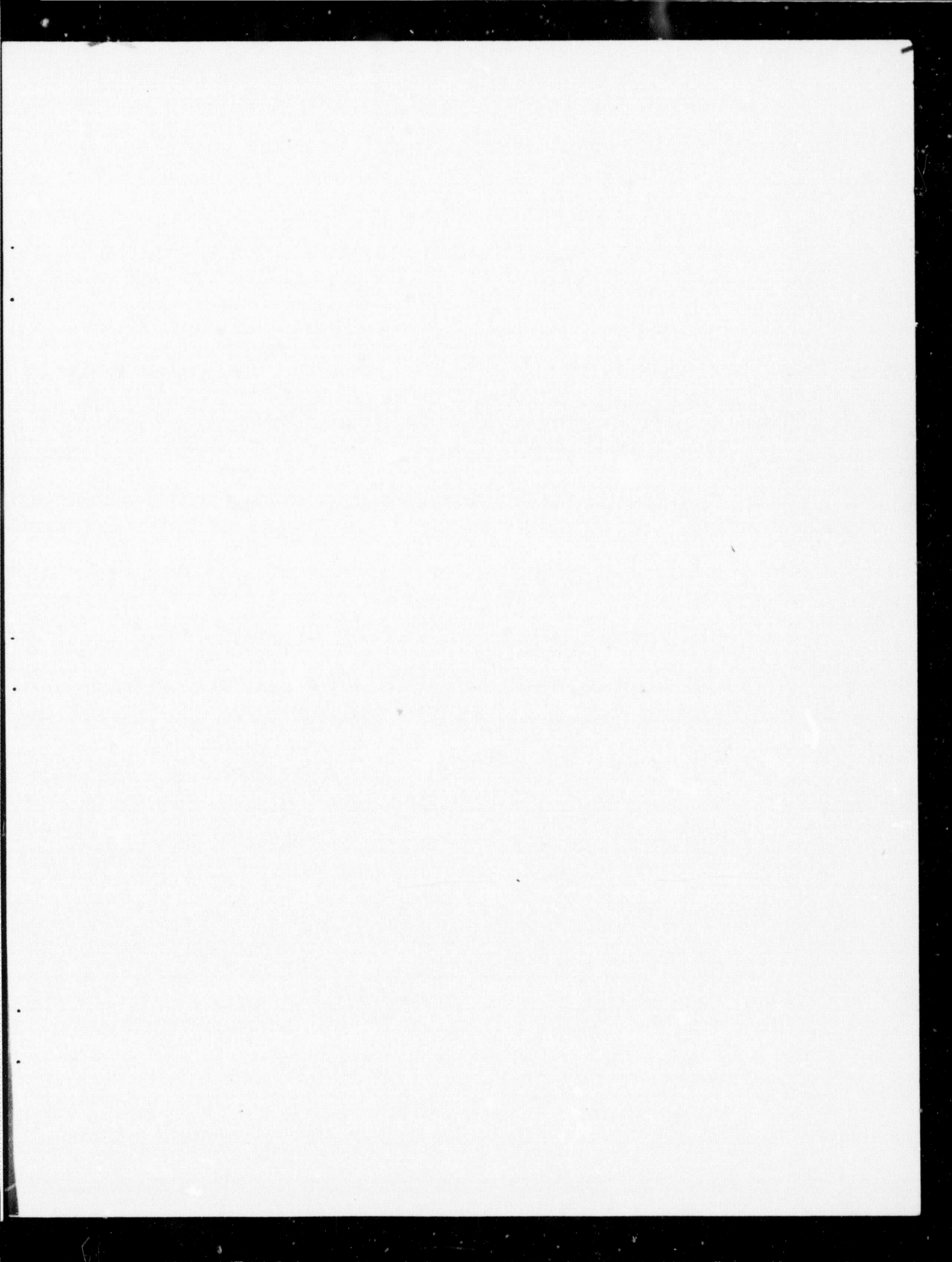
Went to Hender with Rhone
in car. Also Ambrogio ~~with~~.

A-48

~~who was in charge~~ & McHurray
& another cop.

Questioned by cops on
way to Holden. Not warned
of rights.

Never worried specifically
of "rights". Ivan Schoppel
called him at Home P.D.
& told him not to say anything.
He then refused to answer
my questions. Had been trying
to clear himself out. Then.



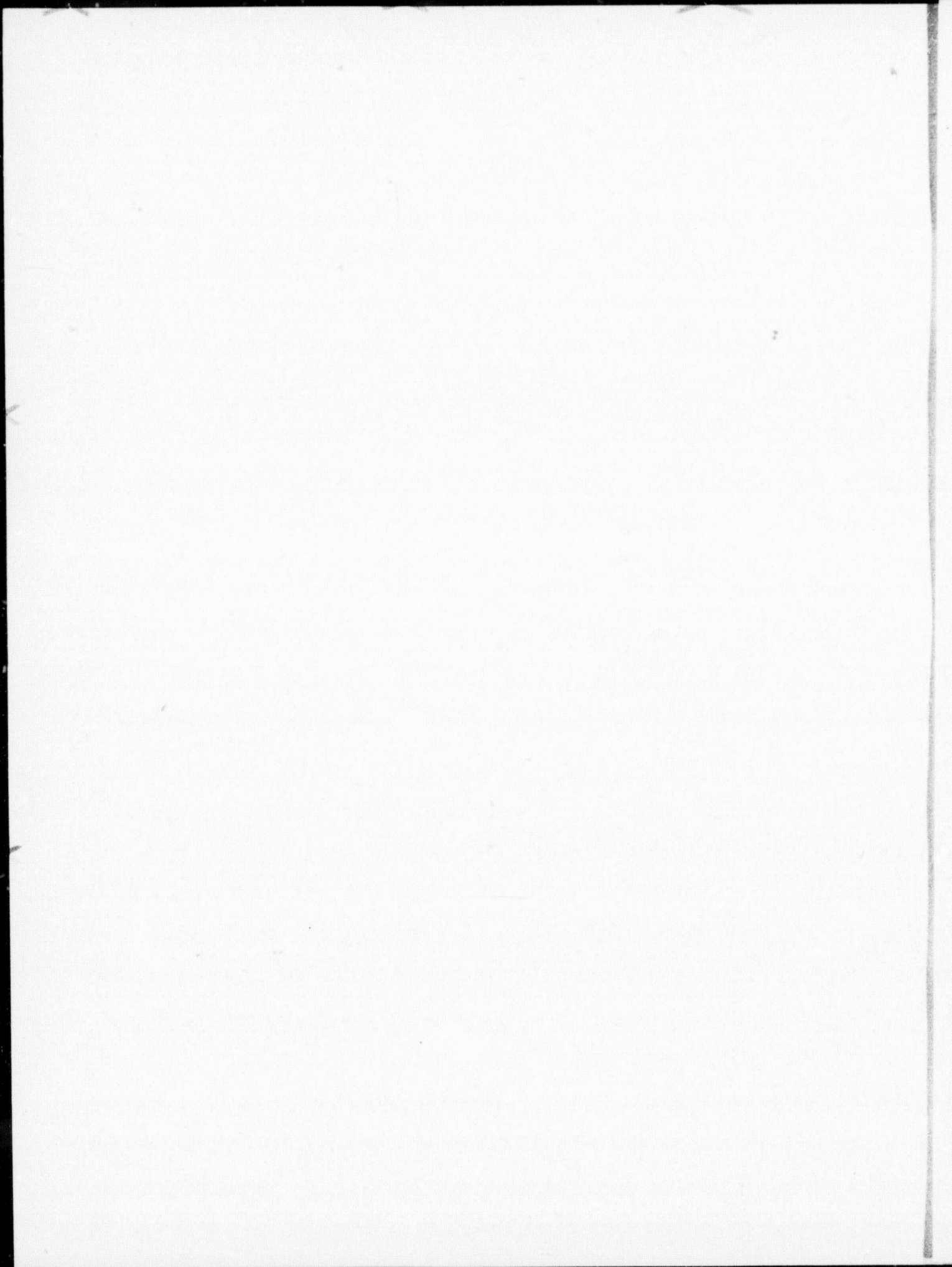


EXHIBIT I: DEMAYO'S FOLLOW-UP NOTES

A-50

Shela Bowers of West
girl friend of def. Claims
he was with her till
1 P.M. State has already
talked to her -
would like to get the
"time table" from her version.
She lives in a housing project
off turnpike.

P/F'S Ex D 2000
11/17/75
SG

PETITIONER'S EXHIBIT D
(DeMayo's Follow-Up Notes)

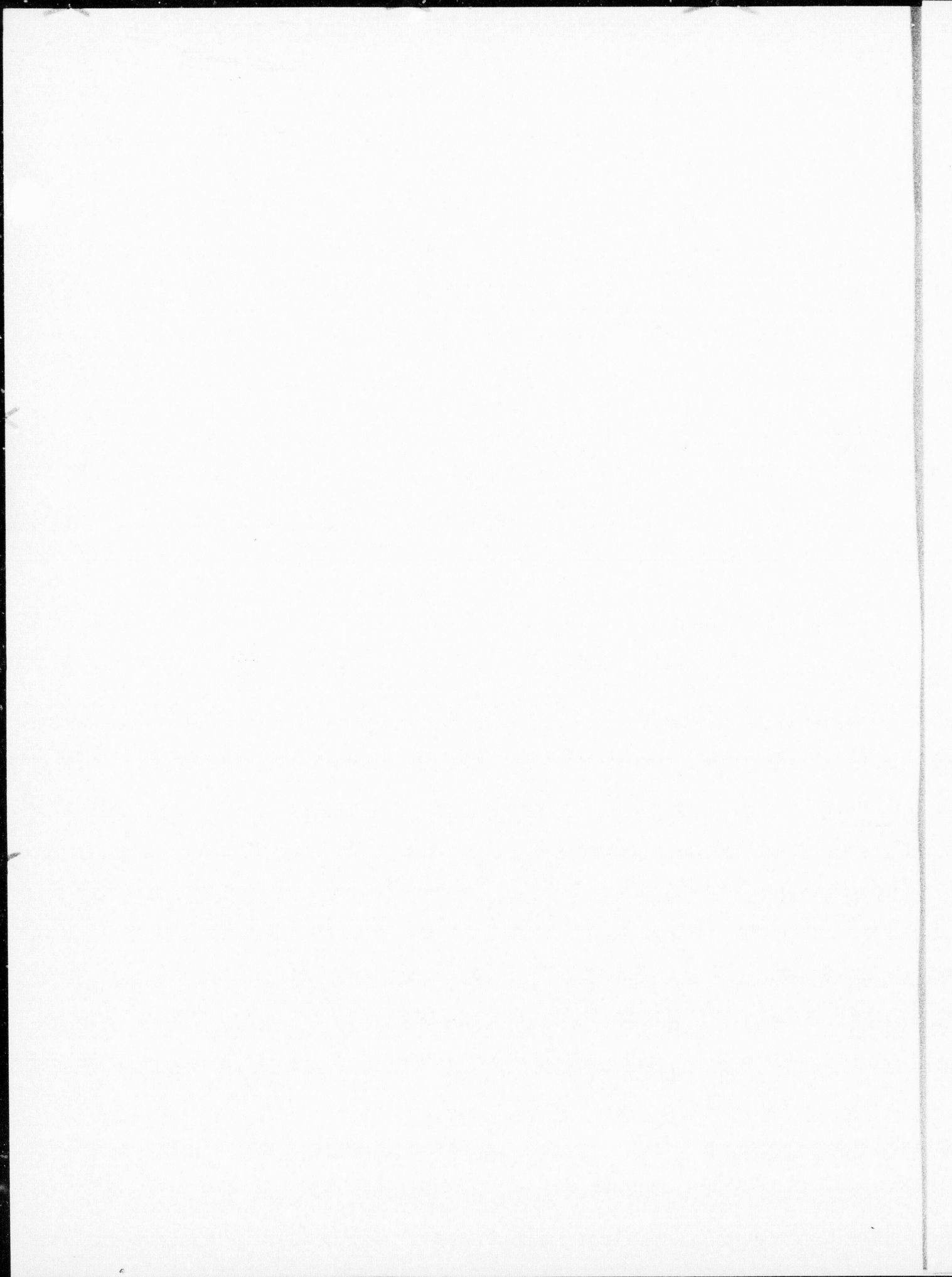


EXHIBIT J: DEMAYO'S NOTES OF GRAND JURY QUESTIONS
FOR RALLS

A-51

6/15/70

PLFIS EX. G 4700
11/17/75
93

When is his gun -

~~that~~ brother says he had one -

no! - never had gun!

Who else did he

see after he left

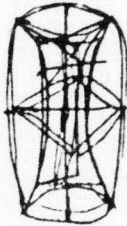
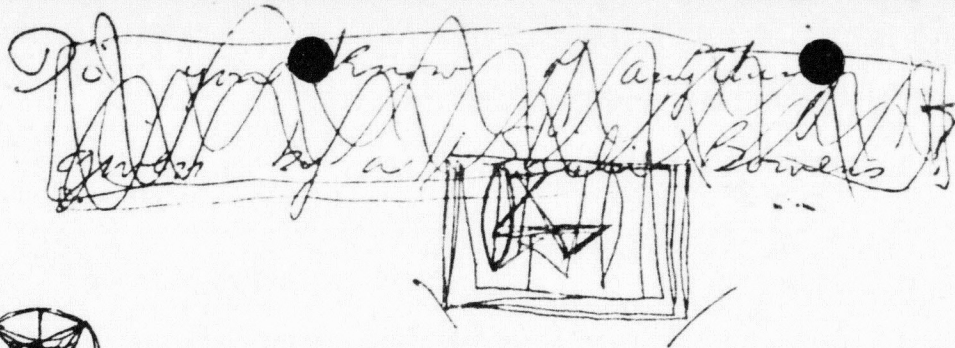
with her in car?

No one

When was his car?

W.H. at Dunkin Donuts

A-52



PETITIONER'S EXHIBIT G

(DeMayo's Notes of Grand
Jury Questions for Ralls)

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EXHIBIT K: RALLS' ARREST AND CONVICTION RECORD

A-53

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20537

3-19-70 355 HJA

The following FBI record, NUMBER 239 280 II, is furnished FOR OFFICIAL USE ONLY.
Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. WHERE
FINAL DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE IS DESIRED, COMMUNICATE
WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD New Haven Conn	John W. Ralls #29087	5-25-69	agg A	BOP fined 35.00 on 6/30/69
SPol Hartford Conn	John Wesley Rawls #227299	2-10-70	poss stln goods	
PD West Haven Conn	John W. Ralls #5153	3-4-70	1st deg mur TOT Hamden PD	
PD Hamden Conn	John Wesley Ralls #3323	3-4-70	mur	Life
St Jail New Haven Conn	John Ralls #3707	3-4-70	Murder (trial)	MENT
PETITIONER'S EXHIBIT (Petitioner's name and conviction record)				

Notations indicated by * are NOT based on fingerprints in FBI files but are listed only as investigative leads as being possibly identical with subject of this record.

John Edgar Hoover
Director

108 Thompson St 159

NAME Rollie John W. ALIAS _____ ADDRESSES 537 Winchester
LAST FIRST INT. CITY New Haven STATE Conn DATE OF BIRTH 6-1-37 PLACE OF BIRTH New Haven
SEX Male HEIGHT 5 FT. 7 IN. BUILD Med. EYES Maroon HAIR Black
APPROX. WEIGHT 165 COMPL. Med Col. WEARS GLASSES YES ☐ NO ☒
MARKS, SCARS, TATTOOS _____ NATIONALITY Col. American
CHARACTERISTICS _____ OCCUPATION U.S.A.F. Laborer

OFFENSE	DATE OF ARREST	OFFICER	DISPOSITION
Drunkenness	7-12-58	A. Candido	D by C
Breach of Peace	1-10-59	W. Coughlin-Other	11/16/59 \$25-
Found Intoxicated	8-30-59	F. Arneso	D by C
Viol. M.V. Laws	9-7-59	R. Buist	\$ 24
Oper. M/V. W/O. Lic.	11-26-59	G. Carey	No/10 \$15
Breach of Peace	3-11-61	W. T. Cummings-V. De Rosa	\$25
Resisting a Police Officer	" " "	" "	#10
Reckless Driving 2nd Arrest	3-11-61	A. Sartini	TOT Hamden P.D.
Breach of Peace	4-14-62	S. Patten	\$15
Fail Drive Prop. Lane	11-22-62	J. Mahr	\$ 35-

[illegible]

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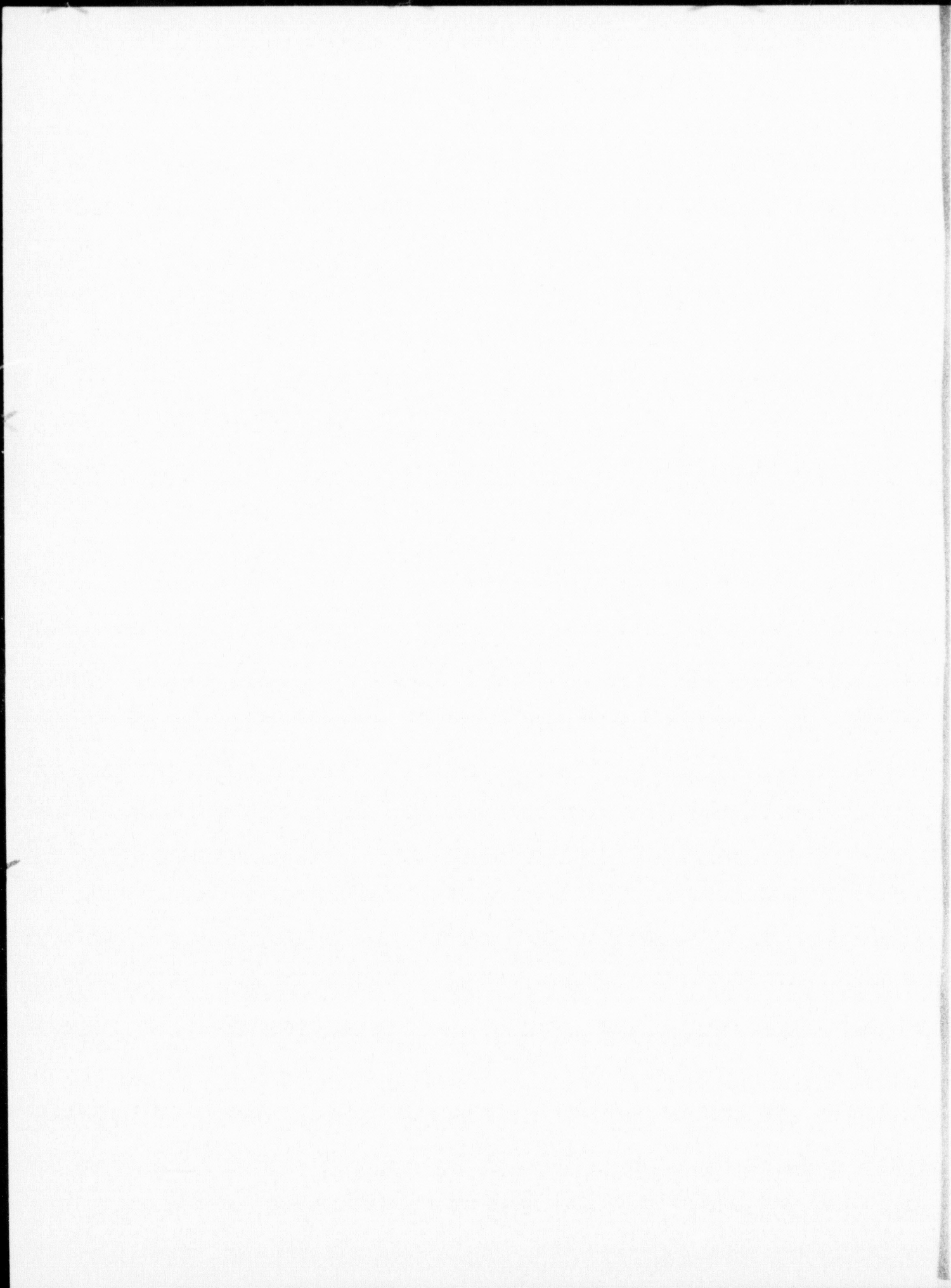


EXHIBIT L: RALLS' FINGERPRINT CARD, FRONT AND BACK
(copy)

A-55

Name Rawls, John Wesley
(Ralls, " ")

227299

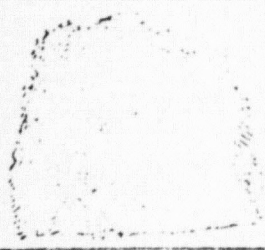
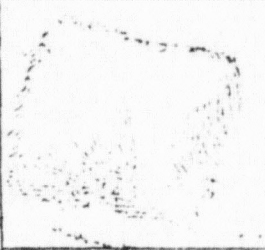
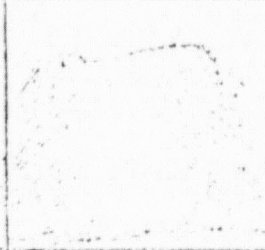
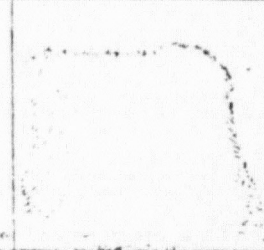
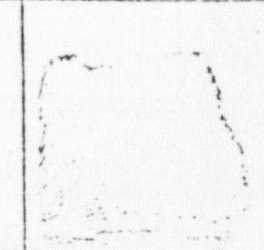
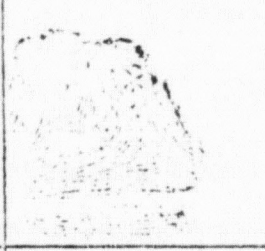
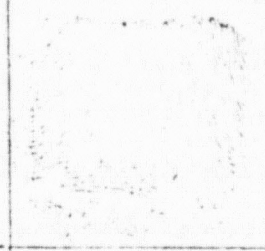
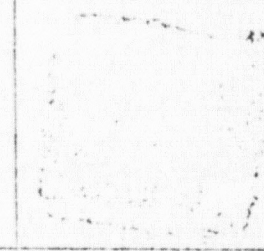
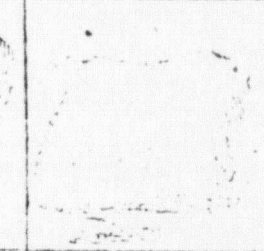
Alias

Finger-Print
Classification

Y-69-0140C

No. Color N Sex M

Reference
Classification

1. Right Thumb	2. R. Fore Finger	3. R. Middle Finger	4. R. Ring Finger	5. R. Little Finger
				
6. Left Thumb	7. L. Fore Finger	8. L. Middle Finger	9. L. Ring Finger	10. L. Little Finger
				

Impressions taken by:

Robert J. Root
(Signature of official taking prints)

Note amputations

Signature of person fingerprinted

John Ralls

Date impressions taken 2-10-70

Four fingers taken simultaneously

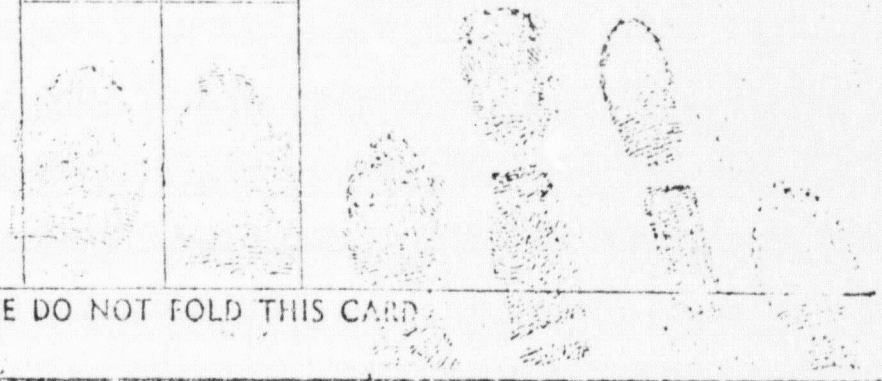
Four fingers taken simultaneously

Left Hand

L. Thumb

R. Thumb

Right Hand

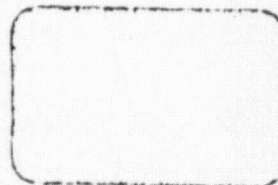
	
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PLEASE DO NOT FOLD THIS CARD

A-56

Connecticut State Police, Hartford 1, Conn.

STATE BUREAU of IDENTIFICATION



Please furnish all additional criminal history and police record on separate sheet.

Copies of this print to 67-20-20

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EXHIBIT M: AFFIDAVIT OF PAUL BERG

A-57

State of Paul M. Berg

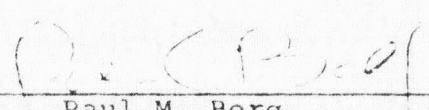
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOHN RALLS,	:	
Plaintiff	:	
	:	CIVIL ACTION
VS.	:	
	:	NO. H-75-107
JOHN MANSON,	:	
Defendant.	:	

A F F I D A V I T

PAUL M. BERG, of Hartford, Connecticut being duly sworn
deposes and says:

1. My name is Paul M. Berg. I live at 270 Laurel Street,
apartment C5, Hartford, Connecticut.
2. I am over twenty one years of age.
3. I believe in the obligation of an oath.
4. I make this affidavit from my personal knowledge.
5. From January, 1971 through approximately May, 1971
I worked in the Public Defender's Office of the New Haven
Superior Court as an assistant to Anthony DeMayo.
6. I did not work at the New Haven Public Defender's
Office before January, 1971, and consequently I did not
participate in any way in the investigation, preparation for
trial or actual trial of State v. John Rawls.
7. I have no recollection of having worked on the Ralls'
case after January, 1971.



Paul M. Berg

A-58

Subscribed and sworn to before me this 24th day of February
1976.

Wendy H. Lisco
Commissioner of the Superior Court

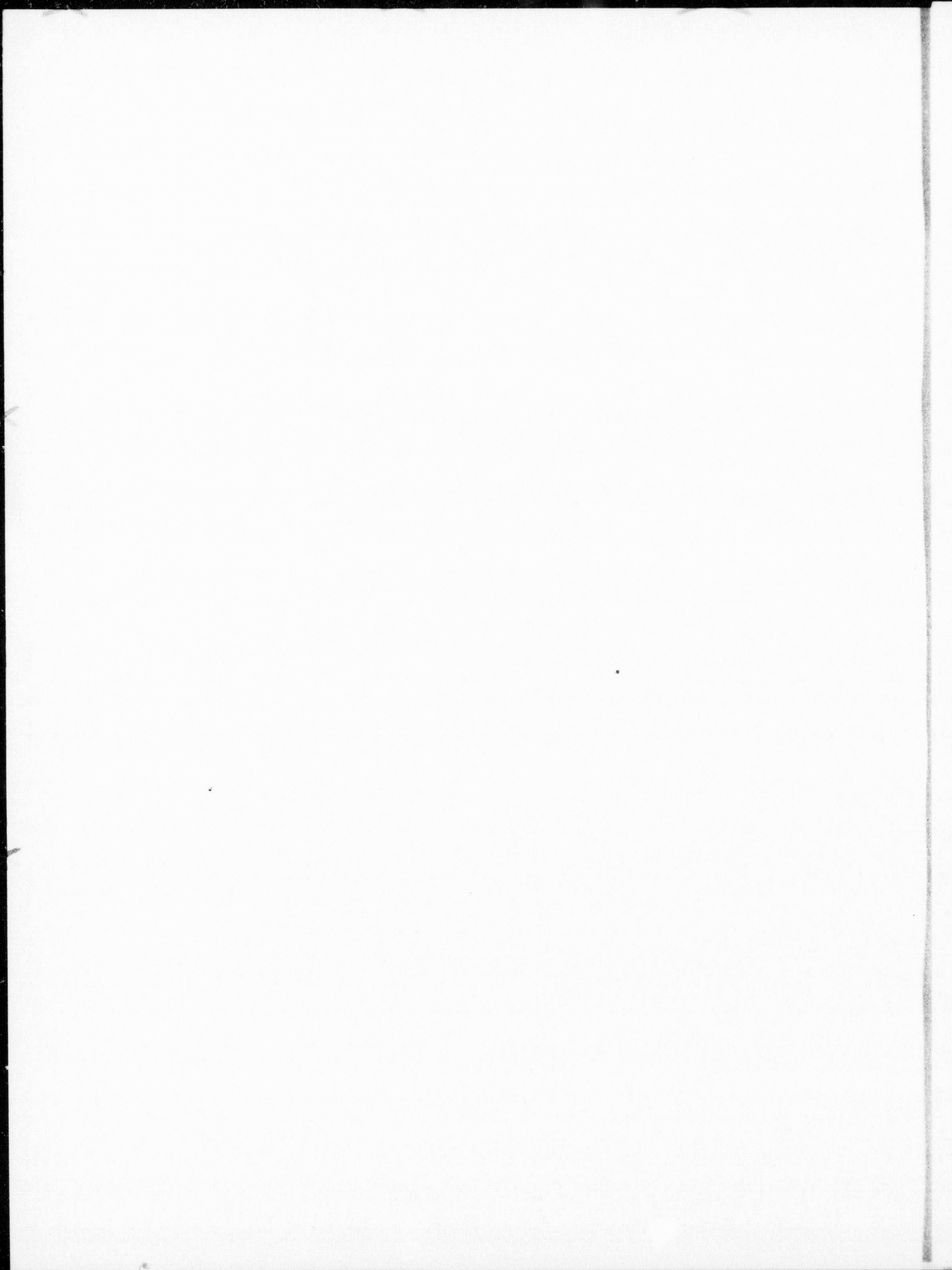
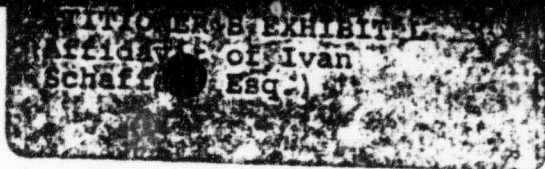


EXHIBIT N: AFFIDAVIT OF IVAN SCHAFFEL

A-59



UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN RALLS :
VS. : CIVIL NO. H-75-107
JOHN MANSON :

AFFIDAVIT

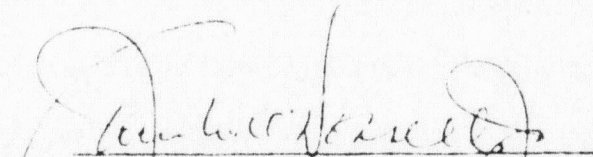
IVAN SCHAFFEL, ESQ., being duly sworn, does depose
and say under oath:

1. I am an attorney admitted to practice in the
State of Connecticut.
2. Prior to March 5, 1970, I had represented John
and Gwendolyn Ralls on various legal matters.
3. On the day of Ralls' arrest in connection with
the death of his mother-in-law, I received a telephone call
asking me to ^{call} ~~represent~~ him. Subsequently that night, I called
the Hamden police station and spoke with Ralls. I advised him
that he was not required to make any statements to the police
and should not do so.

Dated at New Haven, Connecticut, this ⁷/₇ day of June,
1976.


IVAN SCHAFFEL, ESQ.

Subscribed and sworn to before me, this ⁷/₇ day of
June 1976.


NOTARY PUBLIC / COMMISSIONER
OF THE SUPERIOR COURT

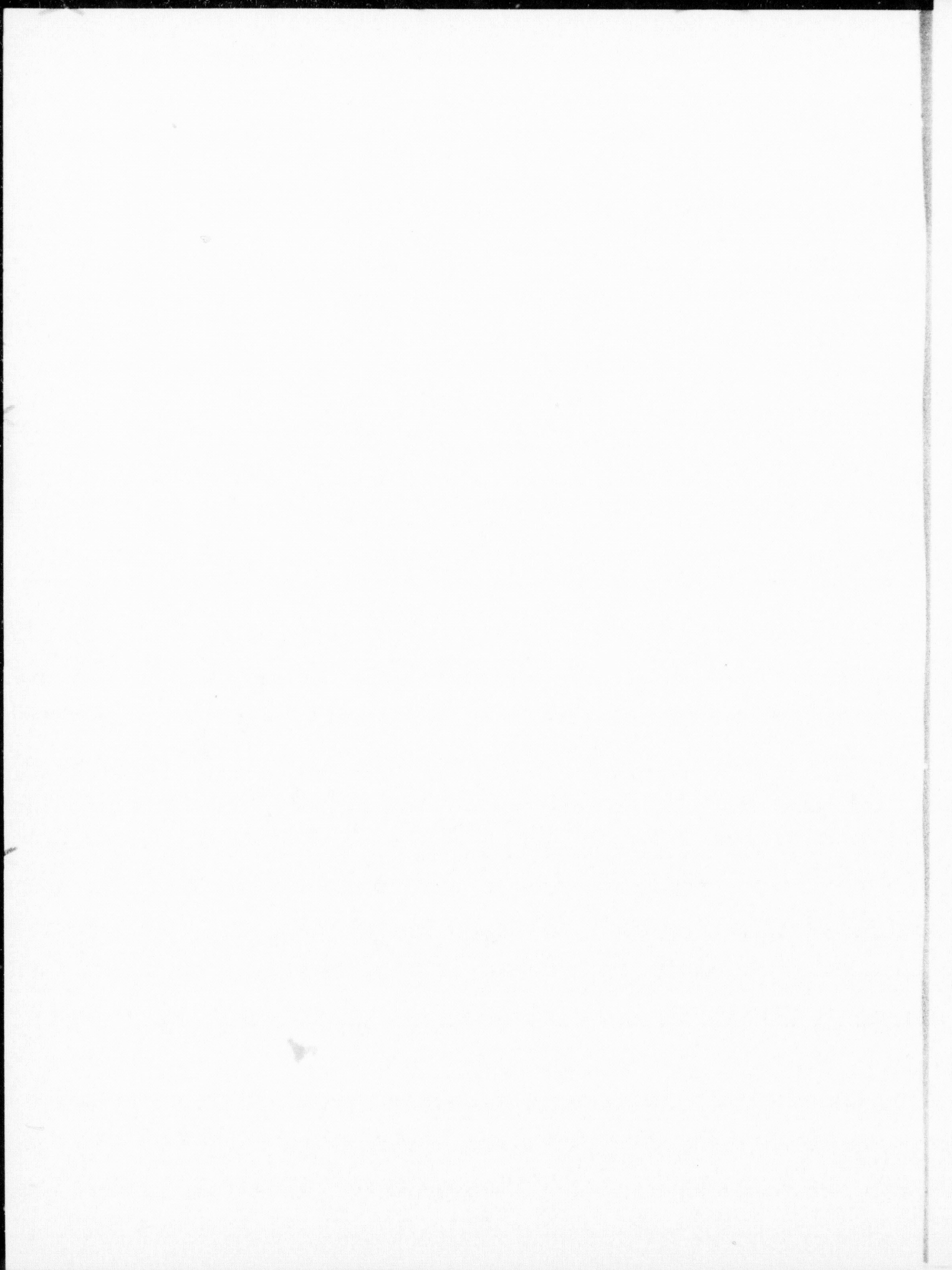


EXHIBIT O; TRANSCRIPT OF ORAL DEPOSITION OF JOHN RALLS
5/25/76, WITH STIPULATION OF ACCURACY

A-60

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOHN RALLS,
Plaintiff

vs.

JOHN MANSON,
Defendant.

:
:
: CIVIL ACTION
: NO. H-75-107
:
:
:

Deposition of John Ralls taken pursuant to
the Federal Rules of Civil Procedure, at the
Connecticut Correctional Institution at Somers,
Connecticut on Tuesday, May 25, 1976 at 9:00 a.m.

A p p e a r a n c e s:

DAVID GOLUB, Esq.
Attorney for the Plaintiff
733 Summer Street
Stamford, Connecticut

ERNEST DIETTE, Esq.
Assistant States Attorney for
New Haven County
County Courthouse
Church and Wall Streets
New Have, Connecticut

A-61

MR. GOLUB: This is an oral deposition being taken of John Ralls in the case of Ralls v. Manson, on May 25, 1976. Present are Mr. Ralls, David Golub, attorney for Mr. Ralls, and Ernest Diette, Jr., for the respondent John Manson. It is agreed, I understand, Mr. Diette, between us that this deposition can be used in evidence in this proceeding as if transcribed before a court reporter. Is that correct?

MR. DIETTE: Yes, that's correct, right.

A-62

J O H N R A L L S, called as a witness, having been first
duly sworn by David S. Golub, a Commissioner of the
Superior Court in and for the State of Connecticut,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLUB:

Q. Mr. Ralls, would you raise your right hand, please?
Do you swear that the testimony you shall give shall be the
truth in this matter?

A. I do.

Q. Please keep your voice up for the tape recorder.
You are the petitioner John Ralls in this action, is that
correct?

A. Correct.

Q. And are you presently incarcerated at Somers prison?

A. Yes, I am.

Q. How long have you been incarcerated here?

A. Since December 11, 1970.

Q. And how old are you?

A. 38.

Q. Now am I correct that you are incarcerated pursuant
to a conviction in New Haven Superior Court?

A. Right.

A-63

Q. For murder in the second degree?

A. Right.

Q. Can you tell us who was your lawyer at trial in that matter?

A. Anthony DeMayo, public defender.

Q. And did he represent you throughout the proceedings in that courtroom?

A. Yes, he did.

Q. At the pre-trial proceedings, as well?

A. Right.

Q. Can you tell us when was the first time that you had occasion to meet with Mr. DeMayo?

A. Well, sometime in April, the first of April, when I was called down to the court building.

Q. When were you arrested?

A. March 5, if I can remember correctly.

Q. Of 1969?

A. Of 1970.

Q. March 5, 1970, you were arrested?

A. Right.

Q. And how was it that you came to meet Mr. DeMayo in April of 1970?

A. Well, I went down to courtbullpen for reasons unknown to me, and he happened to be talking to another person down there, and I asked him did he know me or know anything about my case, and he told me, "No, not at that time, but he'd get back to me as soon as he got more information on me".

Q. Now, you'd been arrested in March of 1970?

A. March of 1970.

Q. Had you met with him or any other attorney from March to April the 5th of 1970?

A. No, I hadn't.

Q. And did you eventually go to court on that day in April of 1970?

A. No.

Q. You remained in the bullpen the whole day?

A. Right.

Q. Did you subsequently write Mr. DeMayo a letter after that meeting with him?

A. Yeah, right. I did write him a letter after the court date, the time I went down the jail, I mean down the court, in April, you're talking about, right?

Q. Yes.

A. Right.

Q. Showing you this letter which has been marked Plaintiff's Exhibit B for identification in a previous deposition, is this the letter you wrote to him after that April meeting?

A-65

A. Yes, it is.

Q. Had you had any...what's the date on this letter?

A. May 13, 1970..

Q. Had you had any contact with Mr. DeMayo between April 5 and May 13 of 1970?

A. No.

Q. And you had, and the only contact you had up until then was the brief encounter in the bullpen?

A. Bullpen, right.

Q. Now you say, had he come to see you specifically in the bullpen that day?

A. No, no. As a matter of fact he didn't even know who I was when I seen him down there.

Q. Did you have occasion to meet with Mr. DeMayo again?

A. Yes.

Q. And when was the next time you saw Mr. DeMayo?

A. The next time I saw him was the morning of the grand jury hearing.

Q. Had you, and when was that, do you recall?

A. I think it was in June, if I'm not mistaken, right around the first of June. I'm not too positive on that, but I think it was in June.

Q. Did you speak with him at that time?

A. Yeah, we had a little conversation downstairs before we went up to the grand jury room.

Q. Could you estimate how long that conversation was?

A. About five minutes, it was very brief.

Q. Did he interview you in that conversation?

A. No, there was a couple of questions that I had to ask him as far as how come there wasn't a coroner's inquest, how come it took so long to have a grand jury; and his answer was the State figured it didn't need a coroner's inquest and they didn't have evidence at that time to proceed with a grand jury hearing.

Q. Did you subsequently see DeMayo again?

A. That day or after that?

Q. Well, that day?

A. Well, after we went upstairs to the grand jury, and after the grand jury brought their answer back in, they looked for DeMayo for about a half hour and couldn't find him, and when they did find him the grand jury read their answer and everything and then we left. I didn't have a chance to talk with him after that.

Q. Were you arraigned on that day?

A. No.

Q. Were you subsequently arraigned?

A. Right.

Q. And how soon after that were you arraigned?

A. I'd say two or three weeks, if I'm not mistaken.

Q. And was DeMayo present at your arraignment?

A. Yes, he was.

Q. Was that the next time you saw him?

A. Right.

A-67

Q. And how long did you see him on the day of your arraignment?

A. For the time we got arraigned, I mean, I would say two or three minutes.

Q. Did you have a conversation with him?

A. No. Only thing he said not to worry wouldn't be going to court, the trial wouldn't be starting in July 14th. I think that's the day they put the trial to start down on the docket.

Q. In other words, when you pleaded not guilty, they set it for July 14th?

A. July 14th, right.

Q. And he told you it would not be going to trial on July 14th?

A. Right. That he would be in touch with me; this was in June.

Q. Did you subsequently see him again?

A. No, not until the trial started which was in November.

Q. So from the date of your arraignment until the day of trial you did not meet with DeMayo?

A. Never seen DeMayo again.

Q. Did you have occasion to meet with anyone from the public defender's office during that period from June to the day of trial?

A. The only person that, there was two people that came over jail. One was supposedly a law student, out of school

for the summer, working out of the public defender's office during the summer, this is what he told me. And he had an interview, this was the early part of the summer. And the next time I seen anyone attached to the public defender's office was in October, the last of October, about a week and a half before we went to trial. And his name was Gerald Cohen. This was the only two people I seen the whole time I was at Whalley Avenue.

Q. All right. Now, showing you what's been marked plaintiff's exhibit A for identification, which is apparently an "interview of defendant" form, now do you recall anyone taking down this information from you?

A. It would have to be that law student, because Gerald Cohen had a yellow pad. I know that he didn't have any forms or anything else. He had a yellow pad there.

Q. So, it's your recollection plaintiff's exhibit A was taken, the information on plaintiff's exhibit A was taken down over the summer by the law student, is that correct?

A. Right.

Q. Now you say that the next time you saw DeMayo was the day of trial?

A. Right.

Q. Could you tell us what happened on the day of trial the morning of that day?

A. Well, the normal procedure would be to leave the jail, we go down to the bullpen, we see our name on the court list. And I'm sitting down there waiting to find out what's going on, and DeMayo comes down and says we're going upstairs to start picking a jury to start the trial, which was a shock to me, 'cause I didn't know we were going to trial on that date. So, I think I asked him had he talked to the prosecutor about a deal, I mean, and he said, "No, he's not going to give you a deal." So I said, "O.K.". "We'll start picking a jury, so I'd like to have a couple of black people on the jury." He said not to worry about that because by him being well known in the area, we'll get a pretty good jury.

Q. And did you then proceed to start the trial?

A. Not the trial. We went upstairs, and we started picking the jury.

Q. At that time, when you started picking the jury, had DeMayo and you had any conferences at length about the case?

A. No, never.

Q. Did you know at that time who the state's witnesses were going to be?

A. No, I didn't.

Q. When was the first time you learned who the state's witnesses were going to be?

A. After the jury was empanelled and the prosecutor was giving his opening statement on how long the trial was going to take and who he intended on calling for witnesses.

Q. Was that the first time?

A. The first time.

Q. Did you have conferences with DeMayo during the trial?

A. Well, there was a couple of times I asked him to ask certain questions that I knew the people on the stand at the time were telling a story, you know, but he said it wasn't important, and the people I asked him to call, one of them he said he couldn't reach, couldn't get into contact with.

Q. Who was that?

A. That was Sheila Bowens. She had already testified on the stand. I wanted him to call her back.

Q. Why did you want him to call her back?

A. Because there was an issue that she could have cleared up on Malcolm McHenry's testimony.

Q. Was there anybody else that you wanted him to call?

A. Yes, a former employer of mine.

Q. Who was that?

A. Florence Sinow.

Q. And why did you want him to call her?

A. Well, more or less character witness. She knew my character and background and all, since the time I was 14, 15 years old.

Q. Was she available, do you know?

A. She was in the courtroom at the time.

A-71

Q. Is her last name S-I-N-O-W?

A. Yes, it is.

Q. Now, did, during the course of the trial, did DeMayo review the testimony of the witnesses against you with you to see if you were able to shed light on possible avenues of examination?

A. No.

Q. We have in evidence one letter that you wrote to DeMayo in May of 1970, is that the only letter that you wrote to Mr. DeMayo?

A. No, it is not. I tried on several occasions to contact Mr. DeMayo. I even had the counselor over at the jail call him several times, but never got response back from him.

Q. Would it be fair to say that you were anxious to speak with him?

A. Definitely. I wanted to know what was going on. I hadn't seen anyone. I'm sitting over in jail, hadn't seen anyone pertaining to the case.

Q. Showing you this, which is marked plaintiff's exhibit C for identification, I don't know if it's possible for you to identify it. You said that when Cohen came he took down information on a yellow pad.

A. Right.

Q. Is this similar to the...

A. I wouldn't know. Oh, similar to what?

Q. Is this similar to the pad, the color?

A. Right.

Q. But you can't identify this definitely as...

A. No, not definitely being it.

Q. Now, did you have occasion to tell any of the people who interviewed you about, withdrawn. Did you discuss with either the law student or with Cohens the manner in which you were advised of your constitutional rights, with respect to your right to remain silent and not give statements, your Miranda rights?

A. I don't recall that at this point. I really don't recall whether that was brought up... I think mostly what they were doing was taking general information, you know.

Q. Showing you plaintiff's exhibit A which is indicated was taken by the law student, that says at the bottom: "May have illegal arrest question. Not warned of rights until station house, but was questioned at length in car to station. Claims Lieutenant Rhone lied to grand jury when he testified as to alleged statements John made to police." Does that refresh your recollection, do you remember telling that to the law student?

A. Right.

Q. Is that an accurate representation of what transpired with respect to the way statements were taken from you?

A. Yes. Everything that you have down there is what I can recall as taking place at that time.

Q. All right, now, on this yellow sheet, series of sheets, marked plaintiff's exhibit C, it said, it says, now, "Questioned

by cops on way to Hamden, not warned of rights, never warned specifically of rights. Ivan Schaffel called him at Hamden Police Department and told him not to say anything. He then refused to answer any questions. Had been trying to clear himself until then." Is that an accurate reflection of what you told someone else?

A. Yes, it is.

Q. And is that an accurate reflection of what happened?

A. Right.

Q. Would you tell us in what manner you were advised of your rights?

A. Well, like I say, it was after we got to the Hamden police station. We had been to West Haven police station. They had fingerprinted me and everything, and then at Hamden, we got there, they sent out for sandwiches, and while we were sitting there they were asking me all these questions, and also about some mail was found in my car, or a letter found in the car or something. While we were talking, Ivan Schaffel called.

Q. Who's Ivan Schaffel?

A. Well, he was an attorney that I was familiar with at the time who had handled some cases for me, and he told me I didn't have to say anything, not to say anything, and he would see me the following morning down in the court building. So after conversation on the phone, and the guy told...I think his name is Malcolm McHenry or something like that, whatever it is... at the Hamden police department, I told him what Ivan Schaffel said. He said, "Well yeah, you don't have to answer any questions;" he said, then they proceeded to tell me what my rights were, at

at that time.

Q. Was that the first time you were advised of your rights?

A. Yes, it was.

Q. And had you already made statements previous to that?

A. Well, they were asking me several questions in the trip from West Haven to Hamden, yes.

Q. Did you tell anyone connected with Mr. DeMayo, whether Mr. DeMayo, or the law student, or Cohens, what you just indicated about when you were advised of your rights?

A. Yes. Well, I been telling them this all along.

Q. All right. So what is reflected in plaintiff's exhibit A. and plaintiff's exhibit C is what you told them about when you were advised of your rights?

A. Exactly.

Q. Now, you've indicated that there were witnesses that you wanted Mr. DeMayo to call. You've indicated Sheila Bowens and Florence Sinow. Was there anyone else that you wanted him to call that...

A. Well, my brother, my brother Kenny.

Q. Did you specifically ask him to call your brother Kenny?

A. Yes.

Q. And what was it that your brother Kenny would testify to?

A. There was an issue over the cars. What type of car I had, and where I was at. So I told Mr. DeMayo this, and he said

that he would call my brother. So when he got back to me, he said that I called, spoke to your brother, whatever he has to say is not going to help you in any way.

Q. Was that during the trial that this happened?

A. Yes, during the trial.

Q. Now, what about yourself? Did you ever discuss with Mr. DeMayo whether or not you would testify in your own behalf?

A. I've asked, I asked him on several different occasions while the trial was going on to let me testify.

Q. This was during the course of trial?

A. During trial. He kept saying well, we'll wait, we'll wait, we'll wait, we'll wait and see what happens and this and that.

Q. And then what happened?

A. I never did get the chance to testify, because when the prosecution rested their case, Mr. DeMayo jumped up very properly and said "The defense rests also."

Q. Now, had he told you that he was going to do that?

A. No. I was totally unaware that his... I didn't even know he wasn't going to call anyone. I assumed he was going to call someone to testify in my behalf, you know, if nothing more than character or anything, or put me on the stand like I asked him.

Q. Did you want to testify?

A. Yes, I did.

Q. Did you intend to testify?

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A. Well, I thought I was going to testify, yes.

Q. And did he ever tell you that you were not going to testify?

A. No, not directly, no.

Q. Before he rested, that was until he rested that was -- withdrawn -- you had no knowledge that you weren't going to testify until he rested?

A. No, right, I had no knowledge of it.

[Discussion between Diette, Golub regarding pronunciation of Cohen]

Q. All right, Mr. Ralls, I just want to clear one matter up before I conclude my examination of you. Was the individual that you spoke with at the jail named Gerald Cohen, is that correct?

A. That's the name he gave me, Gerald Cohen.

Q. O.K., if I was pronouncing it as Cohens, that was incorrect, is that right?

A. Yeah, right.

Q. I have no further questions.

CROSS-EXAMINATION

BY MR. DIETTE:

Q. Mr. Diette, do you know an individual by the name of John Donahue?

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A. No, I don't.

Q. So that if Mr. Donahue testified earlier at a deposition that he had talked to you on several occasions that would be inaccurate?

A. That's definitely inaccurate. I never talked to no John Donahue. I wouldn't know him if he was sitting right in the next chair next to me. I wouldn't know it if he was John Donahue or not. As a matter of fact, the only three people that I got to know in that public defender's office was Mr. DeMayo, Gerald Cohen, and...

Q. The student?

A. No. The one who stood in Mr. DeMayo's place when he left...

Q. McQuade?

A. McQuade. Right. McQuade.

Q. Now you said that you did meet Mr. DeMayo briefly in April in the bullpen area?

A. In the bullpen, yes I did.

Q. And you met him again at the time of the grand jury hearing?

A. Right.

Q. And you met him after that at the time of the arraignment, which you think was June?

A. In June. The latter part of June. I know it was before July, I know that.

Q. Before July, because at that time you thought you were going on trial, is that right?

A. Well, after the, during the arraignment, they put it down as going to trial, starting the trial July 14. So I know it was the latter part of June.

Q. All right. Now you've indicated that you were dissatisfied at the end of trial by the failure to call a Mrs. Sinow?

A. Sinow.

Q. Sinow, and also Sheila Bowens was not called back after she had originally testified?

A. Right. She had originally testified, yes.

Q. And also your brother Kenny was not called?

A. Right.

Q. How about prior to trial, was there any contact by you with the public defender's office through any of the people that you've indicated of the people whom you thought ought to be called as witnesses, was there any discussion of that prior to the trial?

A. No. We never discussed. I never had a chance to talk to anyone about the case, really. Like I said, these two people who interviewed me were just taking general information. This law student, he just said, "We need some information for you in the public defender's office." Gerald Cohen came and said, "You'll be going to trial in a couple of weeks or so, and we need some information." As far as discussing the case with

anyone, this never took place.

Q. All right. So at the time, excuse me, at the end of the trial, did you indicate to Mr. DeMayo, other than the people that you've indicated that there was anybody who had information about this case who had not been called as a witness?

A. No, I don't believe so. After the trial was over, you're saying?

Q. That's correct.

A. No.

Q. And Mrs. Sinow would have been a character witness? She didn't have any information about the actual alleged crime?

A. No, no information about the actual crime.

Q. And your brother Kenny would have only testified about the ownership of the car?

A. See, there was a question of, there was a question, some question arose on the car, they were saying about my car, and at the time I owned two cars. They were saying my car was parked somewhere, this is what they were saying. And I told him we could prove that out by calling my brother Kenny because he knows where my cars were at the time and he knows I had two cars. Which I thought would have been important during the cause of trial the issue that was raised, but DeMayo said no.

Q. And Sheila Bowens, could you give us some idea of what you thought was missing from her testimony? Why did you think she should have been called back?

A. Because, see, when Malcolm, when Mr. Malcolm, Malcolm McHenry was on the stand, he said that he warned me of my rights there in that apartment.

Q. Oh, I see, on that particular aspect?

A. Right. So I told him, well you call Sheila Bowens back, who was in the apartment at that time and she will testify that my rights were never given. And he also said something about my hands--They asked him what was my condition at the time. He said, well he didn't know my manner of speech, but my hands were shaking. So I was going to also say, well how could my hands be, he said my hands were shaking when I went to light a cigarette. I wanted to ask him how could my hands be shaking lighting a cigarette when I'm handcuffed behind my back. That's a pretty good trick.

Q. So it would be basically that part of it, what officer McHenry, I guess it's Inspector McHenry, testified to and she would rebut that?

A. Right.

Q. Now, I suppose what's the final point, are you sure that you never had any conversation at all with Mr. DeMayo about whether you would take the stand or not?

A. I think that you're saying that wrong. I told you I had talks with DeMayo about myself taking the stand.

Q. But then, you're saying then that he, unbeknownst to you, at the time the state rested their case just got up and rested?

A. Right. The prosecutor hadn't even sat down from saying he rested and DeMayo beat him up, you know, the defense rests also.

Q. All right, do you recall having said anything to him at that time in protest about that action?

A. I asked him, I said I thought I was going to get a chance to testify or you were going to call a couple of witnesses. He said, well the way the case went, I don't think it would be beneficial to you to testify. I said, well, I asked you before that I wanted to testify.

Q. Now this conversation that you've just related, was that right after?

A. Yes.

Q. In the courtroom?

A. Yes, in the courtroom.

Q. After he had done that?

A. Right.

Q. Before you'd left the courtroom?

A. Right.

Q. You were complaining or asking him?

A. Complaining about it. Because it was a shock to me. Here was a man that doesn't put on any defense in my behalf. And there was a person here who could, you know, get up and say they knew me or something.

Q. And you were prepared to take the stand?

A. Sure I was.

Q. And you told him of that?

A. I told him of this, yes.

Q. Now one of the claims in the habeas corpus petition that's been filed in your behalf is No. 14c which states that he, meaning the petitioner, I'm sorry he, Mr. DeMayo, did not meet the petitioner, which was you, until the day jury selection began. That's obviously not true, on the basis that you did meet, that you saw...

A. Right before the trial began.

Q. Prior to the trial the time began, as early as April?

A. April, right.

Q. Just a physical contact at best, without getting into what you've described?

A. Right.

Q. All right, now, there's an allegation that he, being Mr. DeMayo, presented no evidence on petitioner's behalf at said trial. Mr. DeMayo, as you recall, did cross-examine the witnesses by the state.

Mr. Golub: All right, I'm going to-- I think that's argument for the brief, and I'll object to the form of that.

Mr. Diette: I, All right...

Mr. Golub: I think also it's clear that he didn't draft this petition.

Mr. Diette: I'm just trying to get into the basic claim of whether he's satisfied with the extent of cross-examination.

Mr. Golub: All right.

Q. I suppose without even looking at this, there was, I think we can agree that there were cross-examinations of various defendants, excuse me, of various state witnesses that got up?

A. Well, I'm, not being you know, that knowledgeable about the law or never sat in on any jury trials or anything, I would say he was just, the questions that he would ask them, was just trying to be proper, I guess you would say. He wasn't really delving into anything or trying to establish any points or leading points. He was just, you know you had to say something, you just can't sit for a whole trial and not say nothing, you know. So he would ask a couple of questions, and this was it.

Q. Did he confer with you or he did this?

A. No, no.

Q. I thought you said, didn't you say before that you had talked to him about various things you thought should be asked?

A. Right. I would bring these up to him, when I know a person's sitting on that stand telling a pack of lies or their statements wouldn't be true. I would tell him to ask them a certain question but he would sit there and tell me, he said, "There's no sense in proving that these people are telling a lie. It's not going to help you."

Q. Do you remember that as a quote?

A. As a quote, and I would quote this, in front of Mr. DeMayo I would tell him this.

Q. Do you remember any instance where you were, where you thought a lie had gone through because of the inadequate

representation?

A. This Malcolm McHenry, right. This Malcolm McHenry.

Q. On the aspect of whether you had been warned of your rights at the time in West Haven and the shaking of the hands.

A. Right. You know when we left in that hallway from, in that hallway, I was handcuffed when I was brought back to that apartment. Now there's just no way that I'm going to be able to light a cigarette. You know it's a lie, he knows it's a lie, and everybody can see it's a lie. But when I told him to question him on that, he said, "Well it's not going to do any good to make Mr. McHenry look like a liar on the stand." I mean this is what I was confronted with the whole time, he would never ask people any questions of point that I would think, you know. Then again, I'm not an attorney so I didn't know.

MR. Diette: I have no further questions.

REDIRECT EXAMINATION

BY MR. GOLUB:

Q. I only have one more question for you Mr. Ralls, I think it's a simple yes or no question, you didn't yourself draw up the petition that is on file in this court, did you?

A. No.

Mr. Golub: All right, that concludes the deposition of Mr. Ralls, with both parties still present and Mr. Diette still present.

(Whereupon, the deposition was adjourned.)

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A-85

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN RALLS :
VS. : CIVIL NO. H-75-107
JOHN MANSON :

STIPULATION

The parties to this action hereby stipulate that the attached transcription of the tape recorded deposition of John Ralls on May 24, 1976 at Somers, Connecticut is accurate and complete.

The parties further stipulate that the attached tape of said deposition shall be held by the Court as a joint exhibit in this action.

Dated at Stamford, Connecticut and New Haven, Connecticut, this 10th day of June, 1976 and this day of June 1976, respectively.

PETITIONER JOHN RALLS:

by: David S. Golub
DAVID S. GOLUB
His Attorney

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RESPONDENT JOHN MANSON:

by: Ernest J. Diette, Jr.
ERNEST J. DIETTE, JR.
Assistant State's Attorney

EXHIBIT P: TRANSCRIPT OF DEPOSITION OF ANTHONY
DEMAYO, 11/17/75 and 11/19/75

A-87

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOHN RALLS,
Plaintiff

vs.

JOHN MANSON,
Defendant.

:
:
: CIVIL ACTION
: NO. H-75-107
:
:
:-----

Deposition of Anthony DeMayo taken pursuant to
the Federal Rules of Civil Procedure, at the United
States Courthouse, 141 Church Street, New Haven,
Connecticut before Gerald Gale a Notary Public in and
for the State of Connecticut on Monday, November 17,
1975 at 8:45 a.m.

A p p e a r a n c e s:

DAVID GOLUB, Esq.
Attorney for the Plaintiff
777 Summer Street
Stamford, Connecticut

ERNEST DIETTE, Esq.
Assistant States Attorney for
New Haven County
County Courthouse
Church and Wall Streets
New Haven, Connecticut

MR. GOLUB: May we have the normal stipulations?

MR. DIETTE: Right.

S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties hereto, that all technicalities as to the proof of the official character of the authority before whom the deposition is to be taken are waived.

It is further stipulated and agreed by and between counsel for the respective parties hereto that the reading and signing of the deposition by the deponent are waived.

It is further stipulated and agreed by and between counsel for the respective parties hereto, that all objections, except as to form, are reserved to the time of trial.

1 ANTHONY DeMAYO, called as a witness, having
2 been first duly sworn by Gerald Gale, a Notary
3 Public in and for the State of Connecticut,
4 was examined and testified as follows:
5

6 DIRECT EXAMINATION

7 BY MR. GOLUB:

8 Q Good morning, Mr. DeMayo. My name is David Golub
9 and I am the attorney for John Ralls, the petitioner in this
10 action. I believe, Mr. DeMayo, you represented Mr. Ralls in
11 the State Court proceedings in November of 1970, is that
12 correct?

13 A That's correct.

14 Q At that time were you employed as a public defender
15 in the State of Connecticut?

16 A I was.

17 Q What was your exact position?

18 A I was the public defender for New Haven County,
19 Superior Court.

20 Q How many other public defenders were there at that
21 time?

22 A I believe one. Yes, one.

23 Q Do you recall approximately what your caseload was
24 in November of 1970?

25 A No, I don't.

1
2 Q Could you make an approximation?

3 A I would only be a guess at this point. I didn't
4 realize you were going to ask a question like this or I would
5 have tried to ascertain it.

6 Q Generally would you say that you had a caseload in
7 excess of thirty-five cases?

8 A Definitely, yes.

9 Q Would you say fifty cases?

10 A Yes. I would say somewhere between fifty and
11 seventy-five as a steady diet. My recollection is that in
12 those days we probably handled in the course of a year two
13 hundred felonies.

14 Q What was the name of the other attorney who was
15 a public defender?

16 A Frank McQuade.

17 Q Were there any other staff personnel in the public
18 defender's office?

19 A Yes. There was a full-time investigator named John
20 Donahue.

21 Q Was there an individual named Paul Berg as well?

22 A Yes. Paul was a student at, I believe it was,
23 Northeastern University, who came with us as sort of a volunteer.
24 He was a volunteer but he was with us to fulfill the
25 university's requirements that he work for a full term, full-

1
2 time in an area that was apt to be his permanent field when
3 he graduated.

4 Q Directing your attention to your representation of
5 Mr. Ralls, do you recall when approximately it was that you
6 began representing him?

7 A It had to be before the Grand Jury. The Grand Jury
8 was called on June 15th, 1970, and I know it was several months
9 before that. We were involved in it because -- for several
10 reasons. One which was -- in my file I have a letter from him
11 dated May 13th, 1970, and I have interview forms for a
12 subsequent interview. I don't have his original interview form
13 in the file at the present time.

14 Q When does the interview form that you have indicate
15 that he was interviewed?

16 A This is a subsequent interview conducted by I believe
17 Paul Berg. It's four pages. In the interview there is a
18 quotation by the writer to the effect that, quoting Mr. Ralls,
19 it says, "DeMayo told me," that is Ralls, "Will not go up on
20 July 14th." So this interview had to be before July 14th
21 obviously but I can't date it specifically.

22 Q May I see that?

23 A Yes. I might point out to you that the letter of the
24 13th quotes the defendant -- in the letter the defendant says,
25 "The last time I spoke with you was April 5, 1970," so

1
2 evidently I was in touch with him as far back as April 1970,
3 which doesn't surprise me because the crime was allegedly
4 committed in March.

5 MR. GOLUB: Please mark these for identification.

6 (Interview form marked Plaintiff's Exhibit A
7 for identification, and a letter marked Plaintiff's
8 Exhibit B for identification.)

9 Q For the record, Mr. DeMayo, do you recall what the
10 charge was against Mr. Ralls?

11 A He was indicted on June 15th for murder in the first
12 degree.

13 Q Was that a murder that allegedly occurred on March
14 1st, 1970?

15 A Yes.

16 Q According to your records it is clear to you that
17 as of June 15th you were representing Mr. Ralls?

18 A Yes.

19 Q That was pursuant to being appointed as a public
20 defender to represent him?

21 A I'm not sure if I was formally appointed because it's
22 been my policy to step into cases prior to the individuals
23 coming to Court so they could be interviewed and an investi-
24 gation conducted and a file opened well ahead of time and as
25 soon as possible after the offense occurred. So there probably

1
2 was no formal appointment per se. There may have been at a
3 later date but my representation did not date from any Court
4 appointment.

5 Q Did you assist Mr. Ralls at the Grand Jury proceedings?

6 A Yes. I was present with him.

7 Q Did you at any time make any motions concerning the
8 Grand Jury proceedings?

9 A At this time, no, because I believe I had just lost
10 in the Supreme Court a couple of attempts to defeat the Grand
11 Jury selection method in Connecticut.

12 Q Did you have any contact with the witnesses who
13 testified before the Grand Jury?

14 A Prior to that testimony before the Grand Jury?

15 Q Yes.

16 A Some of them, not all of them, because some of them
17 were news to us. We heard about them then. So we contacted
18 before.

19 Q This case began November of 1970?

20 A Yes.

21 Q Between the date of the Grand Jury indictment, which I
22 think you said was in June, and November did you personally have
23 occasion to interview any witnesses in this case?

24 A I am trying to remember which ones I interviewed
25 personally myself. I believe I spoke to his mother and father

1 who were -- the defendant's mother and father who were lay
2 witnesses.
3

4 Q Did you speak to --

5 A I believe I spoke to Mr. Bovens, either Mr. or Mrs.,
6 I am not sure which I spoke to, and I think the investigator
7 spoke to Mr. Senior.

8 Q Which investigator would that be?

9 A That would be Mr. Donahue. And at this point I
10 can't recall specifically which of us spoke to anyone else or
11 who we might have spoken to but there was a considerable array
12 of data we were collecting, none of which was turning out very
13 well for the defense.

14 Q Does your file reflect any summaries of statements
15 taken from any witness or any notes concerning interviews of
16 witnesses?

17 A Well, there is a four-page capsule prepared by Mr.
18 Donahue. There is a police report, there is the Hamden Police
19 report of the travel experiment which they conducted and which
20 we conducted independently to check out and those are all the
21 notes -- those are basically all the notes that are in the file
22 at the present time.

23 MR. COLUB: Mark these as exhibits if you have no
24 objection.

25 MR. DIETTE: No objection.

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(Notes marked Plaintiff's Exhibit C for identification.)

A Plaintiff's Exhibit C would be the item prepared by Mr. Donahue I believe. Next is a note in my handwriting concerning -- this must have followed the talk I had with or information I had about Sheila Bowens which Mr. Donahue followed up on.

(A note was marked Plaintiff's Exhibit D for identification.)

A The photostat, one page of a typewritten report, is the States Attorney's write-up.

(States Attorney's write-up marked Plaintiff's Exhibit E for identification.)

Q Plaintiff's Exhibit E would be given to you at the time of the original arraignment?

A I don't know when I got it but it was probably the time, at least by the time the Grand Jury was convened.

The next item is a two page report from the Hamden Police Department concerning their checking out of the possible routes of travel allegedly taken by the defendant and this contains notes and some data on the back page from Mr. Donahue of his checking and rechecking the police route and times and so on.

Q I believe that one of the witnesses at the trial

1 testified as to the times and the distances as to routes?

2 A Yes.

3 Q This was a written summary that you received before
4 hand of that witness's testimony?

5 A Right.

6 Q And the notes in blue magic marker on the rear of the
7 second sheet would be Mr. Donahue's notes confirming or
8 comparing the times that he noted for the distances?

9 A Yes. There was additional data prepared from --
10 prepared by Mr. Donahue from his notes and from his interview
11 with this offer, I believe, which were kept in a confidential
12 file. They may have been destroyed. I am not sure exactly
13 what happened to those.

14 (Hamden Police report marked Plaintiff's Exhibit
15 F for identification.)

16 A Then finally there is a one page sheet dated 6-15-70.
17 This is in my handwriting and these are questions that I had
18 put to Mr. Ralls in the course of that day as to what -- to get
19 his answers because I felt they were crucial in view of what
20 came out at the Grand Jury. This is not complete either but
21 it's the only sheet that's left in the file.

22 (One page of notes dated 6-15-70 marked
23 Plaintiff's Exhibit G for identification.)

24 Q These documents which are marked Plaintiff's Exhibit C

1 through G, Mr. DeMayo, represent the results of the
2 investigations taken by you and Mr. Donahue in connection with
3 this case as in your file, is that correct?
4

5 A With the caveat they don't represent everything we
6 had at the time because numerous attorneys have had this file
7 and numerous people have dug into it and I suspect that we may
8 either have used some of that material and put it in another
9 form or possibly disposed of it because of information in it
10 that might be embarrassing to some of the people interviewed
11 and for that reason I would appreciate your confidentiality in
12 respect to this, particularly with respect to the Bowens' family.

13 Q Between the Grand Jury and the commencement of the
14 trial you recall that you may have spoken with Mr. Ralls'
15 mother and father or Mrs. Bowens and that you believe Mr.
16 Donahue spoke to James Senior?

17 A Amongst others but those I am sure of because they
18 were -- let me see if I can be sure of anyone else that we
19 spoke to. I believe Mr. Donahue may also have gone out to his
20 place of employment and talked to some of the people out there.
21 I am only telling you what I am sure of and --

22 MR. COLUB: Are you planning to depose Mr.
23 Donahue?

24 MR. DIETTE: I think so. At the present time I
25 am.

1 Q We will leave it to Mr. Donahue what he did.

2 A There were some other members of the Ralls family
3 but I believe the mother and father were the most significant
4 because they had been there that morning and had seen him leave
5 with the victim.
6

7 Q Between the Grand Jury --

8 A Excuse me. I do remember this, there was an attempt --
9 an attempt was made to get the estranged wife and my recollection
10 is that she refused to talk to us.

11 Q Was that with you or Mr. Donahue, if you recall?

12 A I think I called her long distance in New York. She
13 may even have dealt with me through a third party.

14 Q Do you recall at anytime during the period from the
15 Grand Jury indictment through the trial when you personally went
16 out to any of the locations involved in the offense, either
17 the First National Store or the Dunkin Donuts Store or any
18 other similar location?

19 A I remember by myself on a Sunday morning driving the
20 route that the Hamden Police had driven and making an attempt
21 to square the -- to explain the location at which Mr. Senior
22 placed Mr. Ralls, because that was incriminating and it was at
23 variance with what Mr. Ralls had given the police in his alibi.
24 It was practically in the opposite direction than it should
25 have been, if his story was true, and it is funny but I can't

1 recall actually going to the Bowns' apartment and yet I can
2 almost see at this point -- I can almost remember where it is
3 in West Haven just off the turnpike, so I can't be sure if I
4 traveled that far with it but I remember being in the Ashun-
5 Henry area and trying to come up with some explanation for the
6 James Senior testimony because that was a deadly testimony.

7
8 Q Would it be fair to say that during this period you
9 were understaffed, Mr. DeMayo, your office was understaffed?

10 A I think the public defender's office in New Haven
11 County has always been understaffed.

12 Q That would apply to the period between June and
13 November of 1970?

14 A Yes.

15 Q Would it be fair to say that you would have been able
16 to conduct a more intensive physical examination of the scenes
17 involved had you not been understaffed?

18 A No, I don't think that's true in this case because no
19 matter what it meant, in a case of this nature which required
20 examination and investigation, this would be done. Mr. Donahue
21 was a full-time employee and he was a former state policeman,
22 he had some experience in this. A case like this would get
23 priority obviously, particularly when we realized immediately
24 that it was going to be a trial and there was a serious question
25 of two conflicting stories here.

2 Q In other words, because it was a murder-1 case it
3 would get priorities?

4 A Definitely. Also it was the kind of a case which I
5 think you realize right early in the game, almost as soon as
6 you get your client's story and do the preliminary investigation,
7 that there are two stories each with some significant
8 discrepancies.

9 Q For that reason would it be a case that would likely
10 go to trial?

11 A Yes. It was obvious this case was going to be a trial.
12 Mr. Ralls protested his innocence; the State at this stage of
13 the game gave us his statement or at least repeated to us what
14 he is supposed to have told the Hamden Police.

15 Q So you knew at least in June of 1970 at the time of
16 the Grand Jury indictment this was a case that was of high
17 priority and would be likely to go to trial?

18 A Yes.

19 Q Between the Grand Jury indictment and the time of trial
20 did you file any pre-trial motions?

21 A No.

22 Q So there was no discovery or a bill of particulars
23 motions filed?

24 A No.

25 Q Did you file a motion to suppress any of John Ralls'

1 statements prior to the trial?

2 A No.

3 Q Prior to the time of the commencement of the trial
4 had you personally made any investigation of the ballistic
5 reports involved in this case?
6

7 A I personally?

8 Q Yes.

9 A No.

10 Q Had you made any investigation of the autopsy reports
11 involved in this case?

12 A Yes.

13 Q What was the nature of that investigation?

14 A I think I was troubled by the fact that the time of
15 death was very significant and I was unhappy with having to
16 rely -- with having the prominence of the Medical Examiner's
17 report confront us and I can't remember now who I discussed
18 this with but it may have been a pathologist.

19 Yes, I think it may have been Dr. Haskell Milstone,
20 a pathologist, and I think I went over with him my problem to
21 see if there was some way I could attack this finding as to the
22 time of death, and, again, it's a little bit hazy but my
23 recollection is now that it was not possible under the
24 circumstances and he may have as a matter of fact concurred in
25 what I presented to him.

Q Do you remember when it was approximately that you spoke with Dr. Milstone?

A No, I don't. He is an old friend of mine. We really were concerned with the fact that we had come up with nothing from any of these witnesses to help us and everything was pointing the wrong way for us.

Q I presume that you didn't feel it was necessary to ask for funds from the State to have an independent pathologist examine the autopsy report?

A I didn't think it would turn up anything that hadn't been -- that wasn't available already from the pathologist that they had and the Medical Examiner.

Q There were also fingerprints at the time involved in this case, is that correct?

A I examined those before trial. I don't recall exactly when but I remember having Officer -- he was then a state police officer, McDonald, go over those with me.

Q Was that shortly before the trial began?

A It seems to me it was longer before the -- sometime before the trial. I have a vague recollection it was in the summer that that was done.

Q Did you make any attempt to secure independent analysis of any of the fingerprints found in the car?

A No.

1 Q There were fingerprints found in the car?

2 A There were five found. Only one, as I recall, was
3 identifiable and that was Mr. Ralls but that didn't seem to be
4 significant because he admitted being in the car that morning
5 and that being the case I didn't think the fingerprint, his
6 fingerprint being in the car was indicative of his having
7 committed the crime since he admitted being there.
8

9 Q I believe you said you were aware that Mr. Ralls had
10 made statements prior to the commencement of trial?

11 A Yes.

12 Q Were you aware that Benjamin and Ada Ralls had made
13 statements to the police prior to the commencement of trial?

14 A Yes, because as I said -- I think that's the mother
15 and father?

16 Q Yes.

17 A We had attempted to speak to them and I am trying to
18 remember if I spoke to both of them or one of them myself but
19 Mr. Donahue or I spoke to both of them on at least one occasion.

20 Q Did you have occasion to do specific legal research
21 on any particular point prior to commencement of trial? Or
22 maybe you didn't feel research was necessary --

23 A As I recall my major problem here was, I felt it was
24 a circumstantial evidence case. I think their circumstantial
25 evidence was damaging.

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I was concerned about his so-called alibi that he gave the police but I also talked to the police officers involved and they at least I know were going to testify that he had been warned of his rights before he made the statements and as a matter of fact Detective McHenry was prepared to testify and did testify that they drove him to these places as he was giving them his version of what had actually happened.

Q The answer to my question would have been you were more concerned with the factual problems than the legal problems?

A The factual problems were considerable, yes.

Q Did you have occasion to submit any requests to charge at the conclusion of the case against Mr. Ralls?

A The file doesn't indicate this so I don't know if there was one or not. That would be in the appellate -- that wouldn't be in the appellate file. It would be in this file.

MR. DIETTE: I don't see any in the record itself, which would not be indicative if some were filed -- those that would be reserved would be those given --

A I seem to recall, maybe you can help me, I have not reviewed that part of the file, but was there a charge on circumstantial evidence? I thought there was.

Q I don't have that with me today. I don't think there were any.

(Discussion off the record.)

Q You don't have a specific recollection, Mr. DeMayo, of actually requesting in writing a specific request to charge?

A No, other than our conversation in Chambers with the Judge in a preliminary fashion asked if at that point if we had any preliminary suggestions, because he was going to be working on his charge either that afternoon or evening and would like to know ahead of time and at that time I mentioned circumstantial evidence request and it was included in the charge, as I recall.

Q That would be an informal request for the Judge in Chambers?

A Yes.

Q Mr. DeMayo, do you recall how long the trial lasted?

A No, offhand I can't.

Q Was it a number of days?

A Yes, it had to be several days. I can't tell you how many. Let's see if I can tell anything from the file.

Q I can move along. I don't think it's necessary to have the exact number of days right now.

A I really can't recall.

Q Do you recall if you were present with Mr. Ralls throughout the trial proceedings, you personally?

A Yes.

Q Were you also present with him throughout any jury deliberations?

1
2 A On the day of the evening that the jury returned its
3 verdict I was there -- I was with him and I was in the courthouse
4 until sometime after six o'clock, to the best of my recollection,
5 and I think that's correct, and hadn't had anything to eat
6 because I had been working at the lunch period and there wasn't
7 any opportunity to do very much in between and I was under the
8 impression that the jury was going to be permitted to retire
9 for the evening fairly soon and consequently I asked Mr.
10 McQuade to cover for me the remainder of that evening because I
11 expected it to be another hour or two at the most. My recollection
12 is I left the courthouse around 6:30.

13 Q That would be November 17th, 1970?

14 A Was that the day the jury came in?

15 Q Yes.

16 A That would be the date, yes.

17 Q I believe you said a few moments ago that you had
18 represented Mr. Ralls throughout the trial proceedings, is that
19 correct?

20 A Yes.

21 Q And Mr. McQuade had not participated in the actual
22 litigation of the case, had he?

23 A Not in the actual litigation, no. He had been present
24 for some portion of it and we discussed some of my problems in
25 the trial with him. He was aware of the general factual situation.

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Q To your knowledge were there any court proceedings subsequent to your absence from the courtroom that evening?

A There are two episodes, as I recall. I believe at five o'clock there was some discussion between the judge and jury and I can't recall at this moment -- this was definitely while I was in the courthouse, it was five o'clock, and I assume I was present for that. I just can't recall. If you would say to me "Are you sure," I cannot. I have the feeling if I were called I was available to be there, so that's the only way I can answer you on that.

As to it subsequently I believe there was indication that a question was raised by the jury and I was not present for that. Mr. McQuade was in attendance at that time. I think I was eating.

Q I'm just looking at the trial transcript and I see that the jury returned 8:07 and received instructions from the judge at which point the transcript lists that Mr. McQuade was present and the jury returned about nine o'clock with a question. Would that refresh your recollection as to there being two instances?

A I guess those are the two instances.

Q At five o'clock the judge did call the jurors back in and the record does not indicate either affirmatively or negatively whether you were present. Would that be the three

incidents involving the jury deliberations that you recall?

A Yes. I know I was in the courthouse at five o'clock, so that if I was aware of the fact that he was talking to the jury I would assume I would be there. I can't specifically -- I have no specific recollection at this point.

Q Do you agree that for the 8:07 meeting and the nine o'clock meeting with the jury that you were not present but Mr. McQuade was present?

A That's right.

Q Do you recall where you were at 8:07 on that evening, which was November 17, 1970?

A No, I don't. I don't know offhand.

Q You just recall that you were not --

A I know I wasn't there.

Q Am I correct that you were also not present when the jury returned its verdict of guilty?

A That's right. I said earlier I was under the impression that they were going to be let go for the evening, much earlier than that.

MR. GOLUB: I have no further questions.

CROSS-EXAMINATION

BY MR. KIETTE:

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Q Mr. Deliazo, you said that you filed no pre-trial motions in this particular case. Thinking back to that point in

A-109
1 time was not an unusual occurrence, and if you could, relate
2 that both to the general situation and to this specific case?
3

4 A Well, for one thing, the statutes and the Practice
5 Book insofar as discovery is concerned were not quite as liberal
6 as they are now. Furthermore it was not unusual for the
7 States Attorney and myself to enjoy an open file situation in
8 cases, and this was particularly true in cases with Mr.
9 Sperandeo who -- and I remember distinctly in this case, first
10 because he thought he had a good case in part and partly because
11 it had been our practice, he made everything in his file
12 available to me, so that I knew exactly what Mr. Ralls was
13 supposed to have told the arresting officers, I knew what they
14 had done to explode that alibi and I knew what they had elicited
15 to a nature extent from most of the witnesses.

16 I believe the only real surprise, as I recall, and I
17 am not sure if it was a total surprise, but I believe the only
18 witness that testified to something that was completely new,
19 as I think back on it now, was a brother of his -- I may even
20 have known something about that, but it seems to me looking
21 back on it now, looking at my notes, it seems that the brother's
22 testimony about the gun and the threats of the night before the
23 episode in question, some part of that may have been news to us
24 or may have been more than we anticipated.

25 That's about the only thing that I can recall. I knew

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1 that the gas station people, for example, had not reported the
2 alibi. I knew about Senior's statement because he was
3 questioned only days after the arrest and I knew about the
4 parents' statement, who I felt very sorry for because they were
5 -- they realized that their statements were in some way hurting
6 the son, their own son.
7

8 There really wasn't very much that went on in the
9 courtroom that wasn't sort of expected. I think I related to
10 you about the police officer's testimony on the route of travel
11 and the time it took to walk and to drive and so on.

12 Q So, in other words, you didn't feel as though motions
13 were required in this type of case?

14 A Yes, I thought any motion that I would file would
15 produce what I already knew and I was really occupied with
16 trying -- I felt like trying to knock down a stone wall.

17 Q The allegation has been made in the petition that no
18 witnesses were called on behalf of the defendant. Were there
19 any further witnesses whom you feel could have been called and
20 was there any indication from the defendant that there were
21 other witnesses whom he would like to have seen called?

22 A Well, the defendant had some very vague suggestions
23 about witnesses and I remember, for example, that he told us
24 there were other people present at the Bowens' house when he
25 got there on Sunday morning; however, I don't believe this was

A-III

supported by Mr. and Mrs. Bowens.

We did not call those people, either because the Bowens' testimony was not significantly at variance with what he said or because they were not there, I suspect, my recollection is, because these people were not there.

Then in the midst of trial he had been telling me about his brothers or brother, I am not sure which that was, but in the midst of the trial during one of the luncheon breaks or one of the recesses, a brother of his appeared and was prepared to offer some testimony which I rejected because I felt that it was probably perjury and was at variance with even the defendant's explanation about the whereabouts of his car and would have effectively destroyed any logical explanation that the defendant gave to his activities.

Q Did you receive any objection from the defendant about this failure to call a brother, as you recall?

A I don't believe -- no, I don't believe he was too upset about this because I told him what I thought it would do. I don't recall his being too upset about it. If he had been I think I would have remembered that but I dismissed this as just an intention to give him a hand and not knowing what he had already -- knowing what he already said, I just dismissed it at that and did not use it. I think it would have been damaging.

Q You said in your judgment you thought that other

A-112
1
2 testimony might have been perjurious. Do you have any reason
3 for thinking that or did you have any reason?

4 A Yes, they were prepared to tell me where his car was.
5 I think there were two of them that were prepared to tell me
6 where Mr. Ralls' car was.

7 Mr. Ralls had already told the police and was probably
8 going to testify at that time that his car had run out of gas
9 and that he had left it in front of a Dunkin Donuts establish-
10 ment in West Haven and I didn't think it was going to help his
11 case or add to the picture, if he then had someone come in and
12 testify that his car was in another location.

13 Q Did you have an opportunity to cross-examine all of
14 the witnesses presented by the State?

15 A Yes.

16 Q Did you feel at all hampered in any of your cross-
17 examination of those witnesses?

18 A No.

19 Q Did you feel as though the full case on behalf of the
20 defendant was presented in your cross-examination of those
21 witnesses?

22 A Yes, I think I got out of them everything that I could
23 get out of them and -- yes, I would say so.

24 Q You have no specific recollection of any complaints
25 from the defendant about the lack of cross-examination at that time?

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A No. My recollection is that -- no, certainly not on the cross-examination. As to the witnesses that he referred us to were people that the police had already spoken to and were prepared to call and did call.

(Whereupon, the deposition was adjourned at 9:45 a.m.)

A-114

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOHN RALLS,
Plaintiff

vs.

JOHN MANSON,
Defendant

:
:
: CIVIL ACTION
: NO. H-75-107
:
:
:

Continued deposition of Anthony DeMayo, taken
pursuant to the Federal Rules of Civil Procedure,
at the United States Courthouse, 141 Church Street,
New Haven, Connecticut before Gerald Gale a Notary
Public in and for the State of Connecticut on
Wednesday, November 19, 1975 at 8:30 a.m.

A p p e a r a n c e s:

DAVID GOLUB, Esq.
Attorney for the Plaintiff
777 Summer Street
Stamford, Connecticut

ERNEST DIETTE, Esq.
Assistant States Attorney for
New Haven County
County Courthouse
Church and Wall Streets
New Haven, Connecticut

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1 MR. GOLUB: This is a continuation of the
2 deposition of Anthony DeMayo with the same parties
3 present as on Monday morning the 17th.
4

5 I understand, Mr. DeMayo, before Mr. Diette
6 resumes his cross-examination that you wish to make
7 a correction in your earlier testimony concerning the
8 staff personnel of the public defender's office in
9 1970?

10 MR. DE MAYO: That's correct. You had asked me
11 two questions which I did not realize were going to
12 be covered by this examination and I really didn't
13 have the answer at my fingertips and I checked my
14 files and I find that in 1970 I did have Mr. McQuade
15 as an assistant public defender but also in the summer
16 of 1970 Gerald Cohen was appointed an assistant
17 public defender, so that I had the two part-time
18 assistants and myself part-time; also you asked some
19 indication as to how business we handled, and the only
20 statistic that I can put my finger on readily was the
21 total disposition for that year, 1970, which was 270
22 cases. That is not counts but 270 cases. I had no
23 counts on post conviction activity or appeals or
24 anything of the sort.

25 MR. GOLUB: Am I correct that all three of the

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attorneys in your office were part-time?

MR. DE MAYO: They were part-time.

MR. GOLUB: And maintained private practices as well?

MR. DE MAYO: That's right. The answer still goes, we have always been understaffed.

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1 ANTHONY DeMAYO, resumed.

2 CROSS-EXAMINATION CONTINUED

3 BY MR. DIETTE:

4
5 Q Mr. DeMayo, the question came up about why did you not
6 make a motion to suppress the statement given by Mr. Ralls.
7 First of all -- I withdrew that. Do you recall the nature of
8 the statement that he actually gave to the Hamden Police Department?

9 A Well, first of all, it wasn't in writing. It was what
10 I would describe as an alibi that he gave when they arrested
11 him and told him what he was charged with and it is also my
12 recollection that at least on two occasions he was advised of
13 his rights, at least according to the Hamden Police and the
14 West Haven Police who participated, and it was while they were
15 in the squad car that he related this explanation of where he
16 had been and how he could prove his innocence.

17 As I say, it was not a written statement, it was a
18 confession with the police officers, and after they stated he
19 had been advised of his rights to remain silent and so on; the
20 alibi statement, the explanation for his activities was then
21 related to Detective McHenry, who, if I recall correctly, then
22 made a detour and actually went to the places, to some of the
23 places, at least, with the accused to have him point them out
24 to him, and it didn't appear to me as though I was going to be
25 very successful in suppressing the statement. It was an oral

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1 statement to start with and they did cover themselves by the
2 charge that the warning had been given.
3

4 Now, when they returned to the Hamden Police
5 Department at some point Mr. Ralls contacted an attorney and
6 after discussing -- after discussion with the attorney, it was
7 not myself nor anyone from my office, Mr. Ralls advised them
8 that he chose to say nothing further and that was the termination
9 of his interview.

10 Q But the statement itself, did you have a copy of that?

11 A It was not written.

12 Q Was it reduced to any notes taken by the Hamden
13 Police?

14 A The Hamden Police had some notes and I had it related
15 to me -- I'm quite sure it was Detective McHenry -- he stands
16 out in my mind as the one with whom I had the most contact and
17 most discussion with about this case. I think he really led
18 the investigation.

19 Q Were you aware of the contents of that statement?

20 A Yes, because that was really what we were attempting
21 to defend against. We were sort of in a predicament of trying
22 to explain these discrepancies, and I might add that the
23 defendant Ralls never denied this. This was what our whole
24 defense was built on.

25 Q This is what I was trying to get at. The statements

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1
2 that were given by the defendant, were they not his effort to
3 deny the entire claim of the State?

4 A Yes. His statement sort of took up where the State's
5 case left off because there was no question, even Mr. Ralls
6 admitted that he had been in the company of the victim that
7 morning and he and other witnesses, including his mother and
8 father, had him at his house picking up some clothing I believe
9 and then going out to the victim's car and getting in the
10 victim's car and driving away. At that point everybody was in
11 agreement. It's what happened after that that led to the --
12 that's what the problem was. Mr. Ralls gave one version of his
13 activities from that moment on and the State, of course, had
14 another.

15 Q So then you would say that as far as the motion to
16 suppress that basically given the fact that it was his denial
17 of all the State's claims that you possibly didn't think there
18 was a need to suppress that?

19 A Well, what I would be suppressing would be testimony
20 that to a great extent he would be -- we would be eliciting from
21 him later, possibly. At that stage of the game very possibly.

22 Q The impact of that statement, or whatever, on the
23 decision of John Ralls not to take the stand -- he didn't
24 testify in this case, did he?

25 A No.

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Q Can you give us some of the background on the decision that was made not to testify?

A Well, it was the direct contradiction of his story to the police and his story to me. He had a --

MR. GOLUB: Can we go off the record for a minute?

(Discussion off the record.)

Q You mentioned before that a contradiction existed. Could you explain what you meant by that?

A Yes. The contradiction existed in this respect, that Detective McHenry's version of what Mr. Ralls had said to him, which placed him at different places and at different times, although John Ralls claimed that McHenry was lying when he related that story, in reality part of our case obtained from Mr. Ralls was to the effect that he had in fact been on this particular route and had done these things and seen these people, McHenry repeated.

So it was a bit of a dilemma to my way of thinking as to denying the truth of it one moment and relying on it the next moment. For example, there was no question that John Ralls had seen John -- I think it was James Senior that morning, and both Detective McHenry said this and John said this.

The discrepancies in the stories arose over the fact that Senior said that he picked up Ralls at a different place and he told him something different than what Ralls said he

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1
2 told him and where Ralls said he really was.

3 Q Getting back to the failure to take the stand, do you
4 recall discussions you had with Ralls on that and at what point
5 in time that decision was made?

6 A My impression now is that he was never -- we postponed
7 actually making the decision, but my recollection is that he
8 was never anxious to take the stand and it's also my recollection
9 that he preferred not to.

10 Q Do you recall whether there was a felony record in
11 the background which might have been used for impeachment
12 purposes?

13 A My recollection is that was also a factor. I don't
14 have it in front of me at the moment but I believe there was.

15 Q I take it then that the decision of the defendant
16 not to take the stand was not based on the fact that he had
17 given this prior statement?

18 A No. I should reiterate this was his decision. John
19 Ralls played a very active part, maybe too active a part in
20 the trial of the case. He was very much his own captain, if
21 you will.

22 Q Picking up on that point, Mr. DeMayo, could you
23 describe for us the working relationship you had with Mr.
24 Ralls, his cooperation with your office and during the course
25 of the trial?

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1
2 A Well, I submit that I would have to make allowance
3 for the fact that he was in serious difficulty with this charge
4 pending but he was not an easy person to work with because
5 I had the feeling that -- it was obvious as a matter of fact
6 that we were not being told everything and that he had some
7 kind of a notion that he would throw out little hints and we
8 were supposed to scurry about and try to develop these things,
9 and many of the leads he gave us really they were baseless
10 and there was nothing to them, and more importantly his
11 version of things was usually at great variance with what
12 the investigation disclosed. It was also a fact that some
13 of the leads led to situations which were and could have been
14 damaging.

15 Q As I recall your testimony from the other day, it
16 seemed the major alibi witness indicated by Mr. Ralls was
17 James Senior?

18 A Yes.

19 Q Who had picked him up on that day?

20 A Yes.

21 Q Do you recall having talked to Mr. Ralls about that
22 incident? I think we have talked earlier about it. The claim
23 came up that when you confronted him with the fact of the
24 existence of what Mr. Senior had said, that he had a certain
25 reaction. Could you describe that scene for us?

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A Well, we didn't hear about James Senior from Mr. Ralls. We learned that from either the States Attorney or Detective McHenry first. I think it was the States Attorney's office. I think Mr. Lawlor furnished us with that information and suggested we would want to check it out, and then my recollection is that Mr. Senior would not speak to us at that time. I don't think he was willing to get anymore involved than he was, but I remember when Mr. Donahue and I confronted Mr. Ralls with Mr. Senior, he was quite upset and annoyed at, I think he first called Mr. Senior a liar and I think his first reaction was he was just a liar, nothing to it. That is my recollection at this stage of the game. He was quite indignant and quite annoyed and really upset and yet this was a legitimate part of the investigation and preparation. His reaction was almost as though we had done something improper by confronting him with this horrible bit of evidence.

Q You say this evidence was very damaging to his case?

A Yes, it was. At this late date it's probably not appropriate to characterize it as such but I would say that was one of the most significant and telling bits of evidence to discredit his version that we had. It had him in a different place than he would have been if his version was correct and it discounted his entire recitation because it mentioned an automobile and where he was going and it really supported the

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1 State's theory that he had, which was basically that he had
2 shot his mother-in-law in back of the A & P on Dixwell Avenue
3 and had then walked down some streets to his home or in the
4 direction of his home and when James Senior picked him up he
5 is supposed to have testified as to a particular street
6 location where he was being picked -- where he was to pick up
7 Mr. Ralls, and he related that Mr. Ralls told him he would
8 like a lift to get his car and the car was in the area where
9 Mrs. -- where the mother-in-law lived.
10

11 Now, earlier we were told that he didn't have his car,
12 that it was left at a Dunkin Donuts place up on Orange Avenue
13 in West Haven and the mother-in-law had driven him to his car
14 with a tank of gasoline.

15 So Mr. Senior in effect had Mr. Ralls in a different
16 place alone whereas earlier the version was he had been in the
17 company of his mother-in-law when he went to get his car.

18 Q And that tank of gas was a factor, was it not?

19 A The tank of gas was a factor because he said she
20 drove him to a particular gas station where the attendants
21 filled a can of gasoline which they then put in the car, the
22 mother-in-law's car, drove out to West Haven and the last he
23 saw of her she drove away while he was taking the can of
24 gasoline to get his car started at the Dunkin Donuts; however,
25 the gasoline station attendants deny that anyone had been in

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1
2 that morning and bought a can of gasoline.

3 I remember on cross-examination I felt I was
4 successful in watering down their testimony so they weren't as
5 positive of that fact as when it started but they still seemed --
6 you could still presume it was fairly unlikely that he could
7 have purchased a can of gasoline from these two young men
8 that morning.

9 Q You also indicated yesterday that you believe you
10 left the courthouse at some time around six p.m. on that day?

11 A I would say, I think it was between six and 6:30.

12 Q That is on the day of the jury deliberation?

13 A Right.

14 Q Do you have any recollection now of the comments made
15 by the Court to the jury, which according to the record, were
16 made around five o'clock?

17 A As far as having independent recollection --

18 Q The record itself has no indication of who was present at
19 that point in time. I think you said yesterday you presumed
20 that if you were in the courthouse, and you were at that time,
21 that you would have been called.

22 A I would expect I would have been, yes.

23 Q You have no recollection?

24 A I have no independent recollection of it, no. I do
25 remember having a discussion in chambers and it was on the basis

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1 of that discussion that I was left with the impression that
2 in all probability the jury would not be kept too long that
3 night. What I based that on at this point I can't recall
4 either.
5

6 Q Getting back to the issue of the caseload at that
7 point in time, do you recall whether you had any other first
8 degree murder charges where people were facing the death
9 penalty?

10 A You mean cases to be tried?

11 Q Yes. Pending at that time or either shortly before
12 or shortly after.

13 A Well, I know I had the Arthur Davis case, which was
14 on appeal and I eventually took that to the United States
15 Supreme Court. That was one of the cases that certiorari was
16 granted on recently -- not recently anymore but a couple of
17 years ago when the Supreme Court decided the death penalty was
18 cruel and unusual punishment.

19 Q It so happened I was looking at that case yesterday.
20 It was a 1969 case. So that in fact the appeal had been
21 decided in 1969?

22 A Yes.

23 Q So that would have preceded --

24 A Davis preceded this. Offhand I can't recall any
25 other without going through the files, I can't recall specifically

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any other first degree murder cases.

I think I may have been still attempting to obtain a release of John Conti, which was also a prior murder case which resulted in a second degree conviction, but by 1970 I think I had gotten him pardoned. Those are the only two that stand out at the moment. If I thought about it I could probably think of some more.

Q Within your office this was sort of a premier case -- it was causing the most concern for you?

A At this particular time for this -- while this case was pending I think it was the most serious matter we had and also it was the most difficult one we had.

Q Were you satisfied with the work done by your investigators in preparing this case?

A As close as I can evaluate it at the time I was, yes. I think the best way I can describe that trial and my reaction was sitting in the courtroom and hearing the case the State put on was sort of a predictable experience. I was aware of what was going to be said and what was going to happen. We kind of knew what we were up against and knew what our problems were and the case just followed right along with what the prior conversations and investigations had disclosed and it was sort of a frightening experience because there didn't seem to be any way we could rebut this or counteract it.

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1 It all happened sort of -- that feeling you have
2 that you can't turn the clock back. There it was.
3

4 Q Do you recall any reaction by the defendant John
5 Ralls after the conviction came in?

6 A I don't recall his reaction.

7 Q Or at the time of sentencing? Were you not there
8 when the jury rendered its verdict?

9 MR. GOLUB: I am not sure that is really probative.
10 We are not making objections but I don't see any
11 reason to pursue that.

12 MR. DIETTE: This was five years after the event.
13 I'm just asking if he at the time expressed a
14 complaint of failure to call --

15 (Discussion off the record.)

16 Q Do you have any recollection of complaints made with
17 you or comments that might have passed between yourself and
18 Mr. Ralls after he was aware of the fact that he had been
19 convicted, and expanding on that, were there any witnesses or
20 leads or alibis that he stated to you were not followed at
21 that time?

22 A I can't recall anything of that nature at this point.
23 I felt that my relationship with Mr. Ralls was a fairly healthy
24 one in spite of our having some differences over the trial
25 situation that I related to you earlier but upon his conviction

2 I was in touch with him regularly.

3 I attempted to follow up leads he gave me of people
4 who might be interested in helping him post an appeal bond.

5 As a matter of fact I have a note in my file of a
6 Florence Sinow. I remember she was an elderly woman who had
7 known him for some time and had known his family. I remember
8 speaking to her on several occasions and my correspondence with
9 him was on a pleasant basis quite a while after I took the
10 appeal and while the appeal was being processed and my file
11 is probably, because nobody has been interested in this phase
12 of the matter, but my file does have correspondence in tact,
13 correspondence with Mr. Ralls.

14 The appeal material I think is fairly well in tact
15 and it wasn't until the appeal began to drag, at least as far
16 as he was concerned, it was dragging, that he began to display
17 impatience and concern, and I recall the day he was in court
18 on a motion to have a special public defender appointed to take
19 the appeal --

20 Q Do you have any recollection of how long after the
21 trial it was?

22 A Not a recollection but I know I have correspondence
23 with --

24 MR. GOLUB: It was approximately eleven months.

25 A Because I have a letter here dated September 10, 1971.

1 He wrote to me on September 1st asking this. Just prior to
2 that we had exchanged some comments where I would concede that
3 our relationship was breaking down. He was reiterating his
4 impatience and said a few things that I felt obliged to respond
5 to.
6

7 Q Can we get into that now. Were those comments with
8 reference to your representation of him at the time of the
9 trial or with the progress of the appeal?

10 A No, I think it was the appellate process. He was
11 definitely impatient. He felt it should move much more
12 rapidly and it wasn't moving very rapidly because for one thing
13 I was waiting for a long transcript before I could process
14 the appeal. That was the biggest --

15 Q Is that an unusual reaction on the part of a
16 defendant?

17 A No. Unfortunately that was one of the things wrong
18 with the Connecticut appellate process, that it took forever.

19 Q Just one final question. Also during this period of
20 a year or so approximately after the conviction came in, at
21 any time during that period did Mr. Ralls indicate to you that
22 there were other witnesses who might have been called, anything
23 at all that might have sustained a claim for a new trial?

24 A Let me see if I understand you correctly. You mean
25 after the trial did he come up with new witnesses, new evidence?

1
2 Q Anything at all that he might have thought that a new
3 trial was warranted.

4 A There is a different standard between the appeal of
5 the old conviction and new grounds for a new trial.

6 MR. GOLUB: Have we made a claim there was --
7 that Mr. DeMayo should have requested a new trial?

8 MR. DIETTE: This all goes ultimately to the
9 question of just how effective was his assistance
10 at the time of the trial. If certain things were
11 not brought out -- I suppose new evidence would not
12 be a factor, but other points that could have been
13 raised that were not. I don't recall any at this
14 time.

15 That's all I have.

16 REDIRECT EXAMINATION

17 BY MR. GOLUB:

18 Q You mentioned that this case was the most serious
19 and the most difficult case while it was pending that you had
20 in your office?

21 A Yes.

22 Q I would suppose that you would agree that murder
23 cases in general are difficult and significant cases?

24 A Definitely.

25 Q When this murder case was heard I believe that

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1
2 Connecticut still had the death penalty?

3 A That's right.

4 Q So would it be fair to say this was a case which
5 required extreme attention and care?

6 A Yes.

7 Q With respect to the motion to suppress, am I correct
8 that had it been possible to suppress the statement it would
9 have been advantageous to the defense to do so? Is that
10 question worded in an understandable manner?

11 A It is. The only fallacy to that theory is, I think
12 this is one of those situations where hindsight enables one
13 to be a little more discrete than is possible then when it
14 comes first blush. The difficulty with that theory, if a
15 motion to suppress was successful all of that would have been
16 out of the picture and have been beneficial, and the difficulty
17 with that theory is that somehow John Ralls had to, because he
18 was the last one seen alive with his mother-in-law, there had
19 to be an explanation, you know, because he was the last person
20 seen alive with his mother-in-law who obviously it was going to
21 be incumbent upon us to discuss with Mr. Ralls and to explore
22 where Mr. Ralls went. That was the difficulty with Detective
23 McHenry's statement, as I indicated earlier. He didn't deny
24 the basic story because the Bowens people, for example, we
25 attempted to use and talk to them with the thought of their

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1
2 providing an alibi. The only trouble was that the time didn't
3 permit -- the times that they fell into place did not permit
4 this.

5 Q Am I correct that the story as related by McHenry
6 from Ralls was discredited by the State?

7 A It was butchered.

8 Q It was butchered by the State?

9 A Yes.

10 Q Given the fact that it was so completely destroyed,
11 even though you had a need to present -- let me withdraw that.
12 Since Ralls' story was destroyed by the State it didn't work
13 to his advantage to present it, did it?

14 A Well, if it were not presented then Ralls would have
15 had to give his version of it because the Bowens couple was
16 definitely involved in the role of alibi witnesses and if we
17 did not use the Bowens people to support, on the argument of
18 time that he could not have done this, it is my opinion that
19 an attack on the time and casting some doubt on the testimony
20 of a few other witnesses was what got the jury to get this down
21 to a second degree murder.

22 Q The Bowens could have been called by you whether or
23 not that statement was in evidence, isn't that right, since
24 they testified that he was at their house at a certain time?

25 A Yes.

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Q So whether or not the whole Dunkin Donut -- the car parked outside the Dunkin Donut story had been there, the Bowens could have been called on as alibi witnesses on the time issue?

A They could have been called but by the time we got to that point we were aware that the time factors were working against us. When I say time I mean the time that he arrived at the Bowens.

Q The nine to eleven a.m. -- the span?

A That's right.

Q What I am really trying to ask here is whether or not you would agree that given the way the evidence came out or given the State's ability to discredit Ralls' story, it would have been advantageous to his defense to have suppressed those statements?

A Well, I suppose that would be true if it were possible to say after checking it all out and deciding that it was harmful, it would be a good idea not to have it in the case.

Q It's also true, is it not, that this was -- this case was heard prior to the decision in Harris versus New York?

A That's right, I think it was.

Q Dealing with that impeachment of the defendant with otherwise inadmissible confessions --

MR. DIETTE: I don't think there is any question

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about that.

Q Do you recall if Ralls ever told you that he had not been advised of his rights by the police officers? We have Plaintiff's Exhibit A for identification, which is an interview of the defendant Ralls, and I believe you have testified that this was not done by you?

A No.

Q And do you see where the investigator indicated he was not warned of his rights until at the station house and then this is Plaintiff's Exhibit C which is in your handwriting, is that right?

A No. I think that's Jack Donahue's. That is a summary. That's true that Mr. Ralls said that he was not advised of his rights until he got to the station house. However, he went to two police stations, West Haven and Hamden, and the testimony was that the statement was not given until they left the West Haven Police Station and were on their way to Hamden, so by Ralls' own version at least he had been warned at the West Haven Police Station.

Q Was it his position that he had not been warned prior to giving the statements, is that what he said?

A Not exactly.

Q Was there some conflict in his mind or did he dispute the officer's version of the warnings as to the rights?

1
2 A I don't think he really did. I remember trying with
3 this notion that -- let me go back a bit. I remember trying
4 to decide whether there was some way I could eliminate or
5 discredit the warning given at the West Haven Police Department
6 on the theory that the West Haven Police were not the arresting
7 department and, therefore, the warning didn't apply because the
8 warning, according to Ralls' version, the warning was given at
9 the police station and the statement to McHenry, the so-called
10 alibi that was later exploded, was given subsequent to the
11 West Haven warning and on the way to Hamden and there was no
12 way I could come up with a theory that the warning didn't
13 count because it was not given by Hamden Police.

14 This was on the assumption that he was correct and
15 that McHenry didn't warn him at the time of the arrest and
16 that his version was correct that he was warned at the station
17 house.

18 Q Did he say he was warned -- withdrawn.

19 A At West Haven.

20 Q That is where he says he was warned?

21 A That's where he was warned.

22 Q You characterized Senior as both the major alibi
23 witness and also the most damaging witness against Ralls?

24 A Yes.

25 Q When did you first find out that the States Attorney's

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2 office had talked to Senior, if you recall?

3 A I can't recall that at this stage.

4 Q Do you have a recollection of whether it was shortly
5 before trial?

6 A I think this may be true. I think this may have been
7 late in the game but we knew it before trial.

8 Q It was late in the game that you found out that they
9 had Senior's testimony, as you recall it now?

10 A As I recall it, the Senior testimony was, insofar as
11 the order of events, the Senior testimony was after we had
12 learned everything, practically everything else, and I think
13 it was probably the last thing we were told about.

14 Q Is it now the policy of your office to file discovery
15 motions in every felony case that you handle?

16 A Well, it is or was?

17 Q Is at this time.

18 A It's not the policy at this time to file them in every
19 case because it would be -- for obvious reasons, but at this --
20 in 1970 and '71 it was not done universally. As I indicated
21 it was pretty much an open file situation.

22 MR. DIETTE: Are you talking about discovery or
23 motion to suppress?

24 MR. GOLUB: I am talking about discovery motions.

25 A I didn't feel there was anything on a discovery

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1 motion that I would have had to file the open file
2 and actually I got more from the open file than I would be
3 permitted to learn on a motion for discovery as they are handled
4 in Connecticut. Let me explore this with you because this is
5 important. Rarely will a motion for discovery permit you to
6 get, before trial, a statement of witnesses. However, on the
7 open file arrangement that was given I had the names, addresses
8 and the testimony of those witnesses.

9
10 Q Am I correct, Mr. DeMayo, that there are two benefits
11 to a discovery motion: one, is disclosure of information by
12 the State to the defense; and the other is it narrows the scope
13 of the evidence that the State is free to present, is that
14 correct? Would you accept both those --

15 A In general I would accept that proposition.

16 Q And consequently would you then accept that while one
17 of the benefits of the open file system is disclosure of
18 information, by not filing a discovery motion you had not
19 limited in any way the scope of the evidence that the State
20 could present?

21 A I can't buy that because discovery motion even if it
22 had been employed, if I chose discovery motion over the open
23 file I would have had less preparation for this trial than I
24 did have by way of advance information. Insofar as it narrowing
25 the issues it was obvious that this was a very narrow issue to

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2 start with, just by the very strange nature of the case, the
3 fact that even witnesses that I would be expected to call put
4 my client in the company of the victim just prior to the
5 commission of the offense, really narrowed the issue considerably
6 and I felt was a very narrow issue and remained throughout.

7 I don't think discovery in this case would have
8 accomplished any more for me or for the defendant. I honestly
9 think that I would have been less well off had the open file
10 method not been in effect and I proceeded --

11 Q Did you have open file as a general rule with the
12 prosecutor?

13 A No. I think it depended on the assistant prosecutor
14 and it depended on the case.

15 Q Were there ever instances in which you had the open
16 file and you filed discovery motion anyway just as a matter of
17 form?

18 A I suspect there were but I can't honestly answer that.

19 Q There was no reason to suspect that you had been
20 denied the open file had you filed a discovery motion in the
21 course of pre-trial proceedings?

22 A I suppose that would -- it's not an unlikely reaction
23 on the part of the prosecutor, but I don't think it was a
24 factor in this case and this was one of those situations where
25 I felt that I had a solid professional relationship with my

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1
2 adversary and he was not interested in playing games with me.
3 I think he understood the problem I had in defending a case like
4 this and I think he also felt that he had nothing to lose by
5 disclosing it. He is not an individual who is interested in
6 convicting anyone who is innocent and I don't think he was
7 trying to be cute or tricky in any way.

8 The way the trial turned out it was obvious he
9 wasn't because as I indicated to you the only surprises, if
10 there were any, were the details that particular witnesses
11 came out with.

12 MR. GOLUB: I have no further questions.

13 RE-CROSS-EXAMINATION

14 BY MR. DIETTE:

15 Q I have one thought I would like to get across. This
16 was a case in which the death penalty was sought by the State?

17 A I don't think they did. It's my recollection they
18 did not ask for the death -- they indicated early in the game
19 they were not going to ask for the death penalty but there was
20 a first degree murder trial and the jury came in with a second
21 degree.

22 Q Do you recall in a general sort of way at that time
23 whether anybody had actually faced the death penalty in the
24 State of Connecticut, anybody been executed in the State of
25 Connecticut in a recent period?

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2 A Nobody had been -- that's interesting because I was
3 in that up to my ears at that stage of the game because of the
4 Davis appeal because -- which made state history at least.
5 Davis would have been the -- was convicted and sentenced to
6 receive the death penalty when I took my appeals to stay that
7 and my recollection is that this was about 1966 or '67, in
8 through there.

9 Q What was that, the Davis --

10 A The Arthur Davis --

11 Q The shooting itself?

12 A The shooting of six people.

13 Q Was August of '66?

14 A I remember '66 was a big year for murders in New
15 Haven County. I remember that well. I never got a vacation
16 as a result of it, but my recollection is that the last person
17 to receive the death penalty in Connecticut at the time Davis
18 was an active case was somebody who had killed a state police
19 officer, and I think his name was Donahue, and I think it was
20 1950, so it had not been very common in Connecticut.

21 Q The only point I'm trying to make, at this time your
22 expectation was not that John Ralls was facing the electric
23 chair or whatever was used in Connecticut at that time?

24 A I had a feeling that there was always a chance of
25 this but I also felt that I would take the necessary steps to

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1
2 go to the Supreme Court if necessary to insure that he didn't
3 get the death penalty, feeling that was my responsibility. I
4 didn't discount it. It's as unlikely as it had been in
5 Connecticut, experience had taught me with the Davis case, for
6 example, that it was a factor but whether -- if you're asking
7 me whether I felt it was a real possibility, I guess you always
8 have to feel it's a possibility.

9 Q A real possibility?

10 A A real possibility.

11 MR. DIETTE: I have no further questions.

12 MR. GOLUB: Thank you very much.

13 (Whereupon this deposition was concluded at
14 9:30 a.m.)
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25

EXHIBIT Q: TRANSCRIPT OF DEPOSITION OF JOHN
DONOHUE, 11/21/75

143

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOHN FALLS,

Plaintiff

vs.

JOHN MANSON,

Defendant.

:
:
: CIVIL ACTION

: NO. H-75-107
:

Deposition of John J. Donahue taken pursuant to
the Federal Rules of Civil Procedure, at the United
States Courthouse, 141 Church Street, New Haven,
Connecticut before Gerald Gale a Notary Public in and
for the State of Connecticut on Friday, November 21,
1975 at 8:30 a.m.

A p p e a r a n c e s:

DAVID GOLUB, Esq.

Attorney for the Plaintiff
777 Summer Street
Stamford, Connecticut

ERNEST DIETTE, Esq.

Assistant States Attorney for
New Haven County
County Courthouse
Church and Wall Streets
New Haven, Connecticut

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties hereto, that all technicalities as to the proof of the official character of the authority before whom the deposition is to be taken are waived.

It is further stipulated and agreed by and between counsel for the respective parties hereto that the reading and signing of the deposition by the deponent are waived.

It is further stipulated and agreed by and between counsel for the respective parties hereto, that all objections, except as to form, are reserved to the time of trial.

JOHN J. DONAHUE, called as a witness, having been first duly sworn by Gerald Gale, a Notary Public in and for the State of Connecticut, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. DIETTE:

Q This is again in the case of Ralls versus Manson. This is Mr. Jack Donahue, who was, as I understand it, at the time of the trial a full-time investigator in the public defender's office for New Haven County. Is that correct?

A Correct.

Q Can you tell us who else was there with you at that time?

A Part-time was Anthony V. DeMayo, the public defender, and Francis McQuade, an assistant public defender, and that composed the entire staff. Both of those were part-timers. I was the only full-time employee.

Q Did you have any assistants in the investigative end?

A No.

Q Did you have any assistance in the investigation of cases?

A We had at that time a student by the name of Paul Berg who was going to Beloit College and he was here on some sort of years sabbatical from the college and he was not paid

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but he did come to the public defender's office five days a week almost all day long.

Q Showing you Plaintiff's Exhibit A for identification, which is an interview of the defendant; is that your handwriting?

A No. That is Paul Berg's handwriting.

Q Are you sure of that?

A It's definitely not mine and Mr. DeMayo or Mr. McQuade would not make them out so it would be Paul Berg's handwriting.

Q There are notes attached to that. This is Plaintiff's Exhibit C for identification. These are notes that have been made out by someone. Is that your handwriting?

A I think that's Anthony DeMayo's handwriting. It looks or appears to be.

Q You did not write any of these interview sheets or notes?

A No. None of these here.

Q Showing you Plaintiff's Exhibit F for identification, which were the routes followed by the Hamden Police Department, there are notes on the back of that?

A That's mine.

Q That is your handwriting?

A Yes.

Q This is Plaintiff's Exhibit D for identification. Is that your handwriting?

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A No, that looks like Mr. DeMayo's handwriting.

MR. GOLUB: I think on Plaintiff's Exhibit C that the first time Mr. DeMayo saw it he did identify it as his handwriting and he forgot later on and he wasn't sure it was his.

Q Mr. Ralls, the plaintiff in this action, has made the claim in the habeas corpus petition that he never met any representative of the public defender's office until the time of jury selection in his trial. Do you have a recollection of this case and at what time you might have met John Ralls prior to his trial?

A Well, I definitely saw him at his grand jury hearing which was some time before his trial. I would say that I probably -- the first contact was maybe a week or two after he was arrested. I recall I was in the hallway outside of the States Attorneys office and Tony DeMayo mentioned something about the murder case last week or so, "We are going to get it."

Apparently he was represented by counsel and then when it became obvious that he couldn't afford it, that I think Tony got a call from an attorney advising him that, you know, he was -- our office would eventually wind up representing him and he said something, I vaguely remember something about, "We have an alibi in this case that at the time" --

Q This is who now, Ralls?

A This is DeMayo telling me that we have an alibi in this case, that at the time of the murder or something to that effect that his car was broken down in West Haven and that people out there can identify him. I assume he got this information not by contact with Ralls but apparently by whoever was representing him prior to our getting into the case.

Q Could you make an estimation of how many times you actually had physical contact with John Ralls in the six months or five months between the crime and the trial?

A At that time it was my policy that we were working on such a big caseload, is that we would go to the jail about three days a week and more or less hold office hours there. They would make it known to the inmates in the bindover section that the representative from the public defender's office was there and I would have a list of names of newly bound over individuals from the Circuit Court, we would get a notice that, whether they were represented by counsel or not, and I would go there to see if they were still in jail and then determine whether or not they were represented by counsel and then interview them.

After that we would sort of hold open office hours up there and anyone who wanted to see us there made it known to a guard and then they would line up in the hallway and come out and talk to me.

I would say prior to his grand jury hearing I probably had half a dozen or more conversations with him in the bindover section in the jail and prior to his coming to court for the grand jury hearing it was policy set forth by Tony DeMayo and myself that we would definitely make sure that we would explain the proceedings of the grand jury to the individual, that just because the grand jury comes out with a true bill is not necessary that would be the ultimate disposition of the case.

That was all explained to him and that he would not have an attorney, that he would be afforded paper and pencil to make any notes that he wished to make on anybody testifying against him in the grand jury room.

I am sure that they were always at that time held on Monday mornings when there was no court, and I would say that at that time prior to the grand jury even being impanelled that we had at least an hours conversation either in the holding cell in the back room or more than likely out at the counsel table in the courtroom.

Q You did not keep records of these type of interviews?

A At that time we couldn't afford the luxury of -- I am not even sure at that time as to whether or not we had an office. I think it was either at that time or shortly before that we were working out of the boiler room literally.

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Q Based on that type of a situation could you indicate what type of a working relationship you had with both the States Attorneys office and the Hamden Police Department on this particular case?

A It started with Arthur Gorman, who was a States Attorney when I first went there.

Q When was that?

A I worked with Dick Sperandio who was the public defender and we had an open file policy that it wasn't a question of holding a deck of cards. We could have access to anything that was in the file. I believe that policy still is in existence today. If we want a copy of statements or they would sit down and discuss the entire case with you. I don't know what the situation is now. We were working with such a caseload about 375 to 400 cases a year and I think we were probably doing better than seventy percent of all the criminal business with the States Attorneys office. We had no secretarial help of any kind and to make it easier for us and to expedite business they had an open file policy where we could have access to just about anything they had.

Q Did you go to the States Attorneys office to investigate their file as soon as you heard about it?

A Yes.

Q What did you find there?

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MR. GOLUB: When was that?

Q Do you remember approximately --

A I couldn't give you a date. I assume it would be relatively early into the case, maybe March or April, somewhere around in there.

Q Did the States Attorney have the reports at that time?

A They didn't have all or complete reports. I must admit pretty early into the case, all they had there were some basic affidavits and stuff for issuance of a bench warrant and I then went to the Hamden Police Department and I met Captain McHenry and Lieutenant Rhone and we sat in Captain McHenry's office and we discussed the case and they said, "Save your time on this one," they said, "We have a witness who picked him up at the scene of the murder," which was completely contradictory to my conversation with Ralls that he wasn't there, he was in West Haven and he hitchhiked home, and that his mother-in-law gave him a ride to his car, and get the gas and that's the last he saw --

Q Did you eventually confront Mr. Ralls with the existence of or the claimed existence of this?

A McHenry didn't show me the exact statements but he told me he had a witness who picked him up at the scene of the crime and he gave me the man's name and he told me that his mother and his father and the brothers, I guess everyone was

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going to testify against him, that they had seen him in her car that morning of the murder, and I went back to the jail --

MR. GOLUB: Can we get as to that point in time this conversation with McHenry was?

A I would say two weeks after the murder, somewhere around there.

Q Perhaps you might pinpoint it down again because of the fact I think you indicated the States Attorney in fact did not have the copies of the report?

A It would probably -- the murder was on the first --

Q Would it have been before the grand jury proceedings?

A Months before the grand jury. I don't recall the date of the grand jury hearing.

MR. DIETTE: It was June. It was some time in June. I think we can agree on that.

MR. GOLUB: Yes.

A I confronted Ralls at the jail. I said at the jail -- it could have been at the jail or it could have been in the courthouse. It was our policy then that we were handling such a caseload that if Mr. DeMayo or Mr. McQuade wanted to talk to the individual we would have him brought down by the sheriff even though he didn't have a scheduled court appearance and we would have the opportunity or Mr. DeMayo or Mr. McQuade would have the opportunity to talk to the individual without having to

leave the courthouse proper and going to Chalvey to the jail. We did that with almost all of them, particularly during the times of plea bargaining and such as that.

Q Getting back to a question I asked you before, I was wondering about Mr. Ralls' reaction when you confronted him with the news that you had this Mr. Senior who had driven him --

A I told him about Mr. Senior, that the Hadden Police Department told me he picked him up at the scene of the crime and shock, you know, disbelief, and then he didn't answer me for a while and then he said -- well, that was later -- that was earlier or it was another date. I really don't recall too much outside of that.

My working relationship with him tended to deteriorate at some point in time around this time there. I wouldn't say hostile or get into a slugging match but I just wasn't reaching him and time after time that he would tell me something and then we would find out later from the States Attorney or something like that, they would show us another statement or something like that and it was completely contradictory, times, places, people he saw, contradictory to him.

I had the feeling then in 1970 that I would be sitting right in this room here today, I had that kind of a feeling about the case, about his attitude and I knew then there was going to be a writ of habeas corpus.

A-154
I wasn't sure it would be at the Federal Courthouse or up at Somers but I know we would have what we have here today.

Q Would that be a unique experience?

A Not very unique. You could almost foresee the individual who is coming through that you felt that was lying and you knew he was not going to cooperate with you and you knew within three or four years or so that you would be most likely up at Somers in a writ of habeas corpus in State Court.

Q You got this feeling working with Mr. Ralls?

A Very early in the case, very early in the case.

Q As far as alibis, did he give you any indication of what his alibi might have been and did you follow up these various leads?

A As far as West Haven is concerned I went to the donut shop there and to the gas station next door and they had no recollection of him being there at all.

Q If we might expand on that, do you recall the alibi and why that was significant?

A That on the morning of the murder that she had driven him to West Haven to where his car had broken down and he took the gasoline and gave her the can back and that was some time early morning, nine, ten or eleven o'clock, somewhere around there. And those people had no recollection of him being there. I don't recall the man's name at the gasoline station on

Goodrich Street --

Q Shelton?

A Shelton and Goodrich Streets?

Q Yes, I believe so.

A We had a number of cases from that neighborhood in the past and I had spoken to him on two or three other prior occasions, so I was not a stranger to the man and I think right around the corner was a place called The Cotton Club. The man's name was Kelly I think and we had dealings with him and I believe I stopped in there to talk to Kelly.

He owned the place and he is sort of like the unofficial mayor of Newhall Street and he knows just about everything up and down the street and there is usually a pretty good crowd around the gas station that time in the morning and casually, you know, asking around, did anybody see him and people knew him but they didn't recall seeing him at that particular -- this is when my relationship with him started to go down and down.

I think we had some words, you know, like it's your life on the line, not mine and, you know, if you're not going to cooperate you're only wasting your time and mine.

Some place along the line there, is that I became interested in other cases. If there was anything to check out I would do it but as far as having the personal contact with him,

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I think I was tied up on something else during this trial. I don't recall sitting in on this trial. I may have been in and out of the courtroom.

Q How about his parents, did you talk to them or try to talk to them?

A I tried to talk to the parents. The only thing they would tell me would be that, we have said everything we are going to say to the police and that was it. I tried to get across to them that we were representing their son and they just weren't that interested in making the statements. His brothers were in jail with him.

Q Did you know of the Ralls family?

A Oh, yes. As a matter of fact I am not sure if at the time span between his arrest and time of his ultimate trial that we didn't represent his brother. I think at the time there were three brothers in jail at the time but I don't recall the names. I know there was -- I also know the other brother Benny was up in Somers. I talked to him many times up in Somers.

Q As alibi witnesses did there come a time also when a couple of his brothers came to you and to your office and suggested that they had an alibi?

A I don't think -- I think it was in the courtroom and I think it was during a recess and Attorney DeMayo and I were

A-157

sitting somewhere or standing near the counsel table and one of the brothers or two of the brothers said they wanted to say something and that was the time when Tony talked to him about there is a car and they know where the car was, the father saw the car drive away in the car and that's when the two brothers came up and said something to the effect that he had two cars, which was new to us and I think at that time, you know, Tony DeMayo saw the handwriting on the wall, you know, someone was going to get bagged on this, and I think he talked to him about perjury and I believe I talked to Ralls about how many cars do you own and he wasn't sure what I was talking about.

Of course, I didn't let the brothers talk to him until -- and he wasn't sure of it and then he said, "I got a couple of them but they are not registered to me," something to that effect. Just very vague about the whole thing and I don't think they got into it during the trial about him having two cars or the brothers taking the stand and testifying to that effect.

Q So then would you say it's a fair statement to say with relation to the mother and the father that they would not talk with you?

A Yes. They had given a statement to McHenry or Rhone or someone from the Hamden Police Department and sometime after they talked to him, maybe a week or a month or something like

A-158

that, they weren't interested in giving any more statements.

I don't know if they had been up to the jail to visit him at that point or not but I do recall going to the house and talking to them but they weren't interested in giving any statements even though, you know, "We represent your son," but they weren't there -- I don't know if McHenry did such a good job on interviewing them and telling them not to talk to anyone else. I don't know.

Q You got the same reaction from James Senior?

A I got the same reaction from almost everyone. Senior just said -- he was hostile towards Ralls. He didn't want to have anything to do with him and wasn't going to go out of his way one bit to help him. I don't know if they were related or what but there wasn't any great love there. He just said to me, I think he said to me, "You read my statement to the police, have you?" I said, "Yes," and he said, "That's it."

Q Was there another possible alibi witness provided by Mr. Ralls, the Bowens basically?

A Ralls was trying to -- I had the feeling -- use me as an intermediary to intimidate Mrs. Bowens. They were having an affair.

Q Do you know that for sure?

A She told me they were having an affair and she was afraid that Ralls would tell her husband and he got the same

impression to me that I should tell her that if she didn't testify and tell the truth, as he put it, that he was going to tell the husband about the affair.

I recall either at the grand jury or some place there out in the hallway that DeMayo and I were talking to them as a couple and she wouldn't say anything in front of the husband but after the husband walked over to the side or something, we had a conversation but she wouldn't say anything in front of her husband, she was afraid of her husband. He was a violent man and she was afraid of what he would do to her and she wasn't going to say anything, but Ralls told me that she was lying because she was afraid of her old man and apparently he was having an affair with her, but she wasn't going to say anything other than what her husband had said.

Q Did you eventually interview her separately?

A Yes. This was in the same thing there and she said that --

MR. GOLUB: The same time in the courthouse?

THE WITNESS: I think it was the day of the grand jury.

Q Did you establish that on a separate interview date and come back at a later time?

A No. Have her come back a different date without her husband? No, she talked to us over on the side while her

4-160
1 husband was still in the building and that was about it. She
2 said, "I'm just going to say what my husband said."

3
4 Q Was there any difficulty with the information --

5 A I don't think she even testified.

6 Q Was there some reason that Mr. Ralls wanted you to
7 talk to her specifically?

8 A He wanted her to change her testimony -- I don't
9 recall if there was a conflict as to when Ralls said when he
10 was at the apartment and as to what time Bowens said. I don't
11 know if there was, but he was trying to have her say that it
12 was later or earlier, I forget what it was, but she was going
13 by the statement that she had made to -- I don't even know if
14 she made a statement to the police. Her husband did. I know
15 he testified.

16 Q Did you make an effort to make sure that she was
17 accurate in that assessment of time?

18 A She said what she was saying and what her husband was
19 saying were the truth but she wasn't going to change it and
20 she felt the repercussions that she was worried about Ralls
21 was going to tell her husband about having an affair with her.
22 But she said this is the time that he was there.

23 Q At the end of all this at trial time did Mr. Ralls
24 ever indicate to you that there were any witnesses who should
25 have been called who weren't or who should have been talked to

A-161
who weren't?

A No. Prior to -- I'm sure that prior even to jury selection it was the policy then -- "Do you have any witnesses that you want subpoenaed or anyone you want to talk to?" And he didn't indicate to me that he had any character witnesses to call forward or anybody else. I am not too clear on that. It is pretty gray but I am sure that prior to the trial and any time during the trial Tony would come up with a list of subpoenas to be served which the sheriff's office wasn't too thrilled about.

Q As part of your investigation did you also make trackings to get an estimation on times and distances?

A I did it on a Sunday morning.

Q Why did you do it on Sunday morning?

A The crime was committed on a Sunday morning and usually the traffic patterns are about the same, the amount of traffic. I drove from the defendant's house, from the mother-in-law's house, from the First National back and forth clocking mileage to various intersections and I am not sure if my wife was with me or not on that Sunday morning.

Q Going to the exhibit here, you were basing that pretty much on what the Hamden Police Department had already done?

A Yes.

Q So they had --

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A They had already done it but I told Tony that I was going to do it for our own -- to verify it.

Q What did you find with your investigation?

A I would say my odometer was probably a tenth of a mile different than theirs. It was very, very close.

Q Would you say that the open file policy at the States Attorney's office and the police department was a help in your investigation in this case?

A Definitely. It would save us the time for filing a motion for disclosures and all these other motions by having an open file policy and save us the trouble of going to the States Attorney's office and asking them to type up a motion for us, which didn't set too well with Mr. Tiernan.

I think it's obvious when they had their mileage, the route they traveled and so on and so forth, I duplicated that by reading that. I am not sure that I saw all of the statements that they had in their file. I would get a name and I would say, "What did so and so tell you," and I think it was after that I would tell Ralls, you know that so and so is going to testify against him, like his mother, brother, relative or alibi witnesses, that they don't recall and I think it was at that time, you know, he said they were lying.

Q Did you take part in the trial at all?

A I don't recall. I think that 1970 -- no, I think I

4-163 21

was very deeply involved in the Black Panther trial at that time. We had one co-defendant and one witness, George Sams and Loretta Luca. I am not sure -- I think it was probably later than that that I took one of the witnesses to Carolina when the trial was over but I don't believe if it was 1970 or not.

Q Do you have any recollection of whether Mr. Ralls at the time of trial indicated that he was dissatisfied with the investigation that had been done or that there were witnesses who should have been called and were not?

A No, because Tony would have been quite upset and made it very clear to me that if we hadn't talked to the people that he wanted to talk to or anyone subpoenaed we wanted subpoenaed. We were very aware that this proceeding would be at this time and we certainly wouldn't ignore any witnesses that he wanted interviewed.

MR. DIETTE: I have no further questions.

CROSS-EXAMINATION

BY MR. GOLUB:

Q You testified that you were the sole full-time investigator in the public defender's office at that time?

A Correct.

Q I think you also indicated that you had a very heavy caseload?

A-164

A 375, 400 cases a year.

Q Do you recall at any one time how many cases you would be working on?

A How many open files we would have at any one particular time?

Q During the time that the Ralls case was pending, for example.

A From March until November, probably 300.

Q 300 open files?

A Yes.

Q You say that you didn't have any secretarial help in the public defender's office?

A At the Ralls trial I don't think we did have. It was at a later date I think under a federal grant or grant from someplace that Tony DeMayo was able to get the funds, or matching funds, to hire a secretary.

Q So when you wanted to get something typed what did you have to do?

A The States Attorney's office would type it for us or Tony DeMayo would have his secretary in his own office type it for us.

Q So it was difficult to get things typed, is that it?

A Unless I typed it myself and I don't think it -- and it would be hunt and peck.

Q Do I understand your testimony correctly that you were the one that did the leg work investigation on this case?

A Yes. I would do it because, with the caseload, Tony and Frank would be in the court and I would say probably three, three and a half or four hours a day, pretty close to five days a week or four days a week.

Q So really the leg work was solely your responsibility?

A Yes.

Q You were the sole person who did it in this case?

A Right.

Q And you know that for a fact because you were the one who then would communicate the results of your investigation to Tony or to Frank or whoever?

A Yes.

Q Specifically in this case to Mr. DeMayo?

A Right.

Q So the record will be clear any investigation that was done in this case was done by you?

A Correct. The only possible help I may have had would have been like filling out that form, is that I went to the jail with that student Paul Berg and he would fill out the form.

Q What I mean is, just so that --

A I understand what you're talking about. Field work or leg work, no.

Q Just so that we can clarify areas of responsibility, you know for a fact that the field investigation that was done was done by you?

A Yes.

Q You know that from your conversations with Mr. DeMayo?

A Correct.

Q You said that you made attempts to talk with Ralls' parents?

A Yes.

Q And you made attempts to speak with James Senior?

A Correct.

Q Did you also indicate that you spoke with Ralls' brothers?

A Not at the jail. I believe we spoke to him during the trial. I think he was in jail up until just prior to trial.

Q You also indicated that you spoke with the Bowens?

A Yes, I believe that was on the day of the grand jury proceedings and I believe it was in the hallway of the Superior Court.

Q For that investigation, since that took place in the courtroom of the grand jury, Mr. DeMayo was present to your --

A Yes, I would say so, yes.

Q Did you speak with any other prospective witnesses outside of the courtroom?

A-167

25

A I think --

Q You also spoke with two other people at the gas station?

A Both gas stations.

Q The gas station and Dunkin Donuts?

A Right.

Q I am not trying to trap you or anything like that, but excluding all the people I just mentioned, the brothers, the family, the Bowens and the people at the gas station, did you speak with any other people?

A Not to my recollection. It wouldn't be of any importance to the case. I don't recall. If he had specifically said that he wanted someone to talk to we would have done it.

Q So you did not interview any other person aside from the persons that you have already referred to?

A To the best of my knowledge.

Q To your knowledge you were the one doing all the investigation in the field?

A Right.

Q Did you have any occasion to conduct any kind of investigation into the victim in this case, into the background of the victim?

A I don't believe I did.

Q Am I correct that your investigation would generally

A-168

proceed subsequent to being informed by the States Attorney's office that they had a statement from a witness and then you would -- that was how you became aware of the witnesses or that was how you became aware of what their testimony would be after the States Attorney's office informed you that they had a witness, is that question too complicated?

A No, I understand what you're saying but that was not the pattern that we followed in the case, that we would wait for the States Attorney's office to do something before we would do something.

Q Do you recall ever trying to speak with Ralls' wife, John Ralls' wife?

A I don't think so. As a matter of fact I asked him where she was and all he would tell me was New York City. I don't think he knew at the time, that he knew exactly --

Q Were you aware prior to the trial of the witnesses who would be coming into testify from United Chemical in Cheshire?

A No.

Q That wasn't in the file?

A No. I didn't see it or I had no knowledge that they had it. He certainly never indicated to me that he wanted any of these people to talk to, boss or fellow employees.

Q When you say he do you mean DeMayo or Ralls?

4-169
A Balls.

Q Did DeMayo ever indicate to you that he knew about those people?

A Not to my knowledge, no.

Q Would you say that you maintained a fairly close relationship with the file in this case?

A As best I could with time available.

Q You don't recall seeing that in the file?

A I don't recall seeing that in the file.

Q To your knowledge then --

A I briefed through this very briefly.

Q The record in the case you're referring to?

A Mr. Goodman I think was his name -- the man who owned U.S. Chemical, what I read there, he would have made an excellent character witness for him and I am sure if that was available Tony would have had him subpoenaed rather than the State.

Q What about the business with the checks missing from the office?

A I had no knowledge at all about the missing checks and petty cash.

Q To your knowledge that wasn't included in the file?

A Not to my knowledge, I didn't see it.

Q We have already established that you did have a

A-170
1
2 working knowledge of the file.

3 A I would say a working knowledge. As a matter of fact
4 I don't think I would go into too much on the missing checks
5 anyway from a defense point of view but I don't recall,
6 otherwise I would have I am sure that we would have had a
7 subpoena issued for his employer out there. The man spoke
8 very highly of him.

9 Q This was a murder in the first degree case, is that
10 right?

11 A That's true.

12 Q Am I correct that that was a very serious case?

13 A Yes.

14 Q Would you say it was one of the most serious cases
15 in the office at the time?

16 A Not necessarily.

17 Q Would you say there was a case that --

18 A In magnitude, yes; in penalty, yes, but in my ten
19 years down there I think I have handled probably eighty-six
20 or eighty-nine murder cases.

21 Q Would you say that this case received unusual care
22 or attention?

23 A As much care and attention we gave any murder case
24 which was certainly more important than any breaking and
25 entering or sex crime.

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1
2 Q In the course of giving it that attention, that would
3 be while you would maintain a close relationship with the file
4 in the States Attorney's office?

5 A Yes, and particularly going on trial in a first
6 degree murder case, which is the most serious case you can have,
7 that Tony would be reviewing the file and the jury list of
8 prospective jurors two or three weeks in advance and it would
9 be decided as to which one would try the case, he or Frank,
10 and they would take the file and then they would leave notes
11 for me or call me that they wanted this done or something else
12 or did you talk to --

13 Q You don't ever remember seeing anything about the
14 U.S. Chemical in the file?

15 A I don't recall. As a matter of fact when I read,
16 when I went through the record last night it had a statement
17 by his employer there that he worked for him for nine years
18 and was like a son to him and things like that. I had no
19 knowledge of that.

20 Q Did you know from the time that they were going to
21 call in a local West Haven police officer to testify about the
22 absence of any motor vehicle on the street?

23 A No.

24 Q That wasn't in the file?

25 A I think that was probably an after thought when they

A-172
1 were reviewing the file, how will we get the evidence in.

2 Q What about the Dunkin Donut people, was there anything
3 in the file that they would be called in?
4

5 A I assume there was but that's where I went to talk
6 to those people.

7 Q How about the car wash people, anything in the file
8 about the car wash people?

9 A Yes, about the car wash, about the Dunkin Donuts ,
10 the Atlantic Gas Station.

11 Q That is how you knew to go out there?

12 A Yes.

13 Q Did you go to the car wash place?

14 A Yes. It was next door. I call it a gas station but
15 it's a gas station-car wash, it's a combination.

16 Q One being the Atlantic station where he allegedly
17 bought the gas and the other being the car wash?

18 A Yes.

19 Q The third being the Dunkin Donuts?

20 A The third being Dunkin Donuts.

21 Q You didn't know anything about the police officer?

22 A From West Haven?

23 Q Yes.

24 A No.

25 Q That wasn't in the file?

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A I think they just thought --

Q On the spur of the moment?

A I think so.

Q Do you remember anything else like that on the spur of the moment from the trial?

A I think probably -- well, I am sure they were aware of the checks and I don't think I anticipated them going into the check thing. All I know is that there were some checks missing that he had access to them, he told me he had access to them but they were already predated and he was the assistant plant manager and it wasn't any big deal for him to have that. The only thing when I read this here -- about the petty cash being missing.

Q You didn't know about that?

A I didn't know that.

Q You didn't know they were going to call in people from U.S. Chemical?

A No.

Q You had made no attempt to interview those people out there, is that right?

A No. At that time I didn't see where it was relevant and he never gave any indication that the owner of the place would be a very good character witness for him. I think he indicated here, he said more like a son to me than an employee.

A-174
1 Q Did you know that one of the brothers had given a
2 tape recording statement?
3

4 A No. I know he had given a statement but I wasn't
5 aware that it was a tape recording.

6 Q That wasn't --

7 A No, but I would say I wouldn't be surprised because
8 there are certain departments in New Haven County that do a
9 very thorough investigation and others that just sort of let
10 it slide through and Hamden is one of the better ones.

11 Q It wasn't in the file that there was a tape recording
12 statement?

13 A No. I don't recall seeing any. I think that was
14 probably a surprise during the trial.

15 Q The tape recording?

16 A Yes.

17 Q Were the pictures in the file, the pictures of the
18 corporation?

19 A Yes.

20 Q Was the cigarette -- remember there was a cigarette
21 found in the car? Was that indicated in the file?

22 A Yes. There was a notation that there was a cigarette
23 found in there, that his fingerprint had been found in the
24 thing. I told him about his fingerprint being in the car. He
25 made no denial and said he had been in the car many times. I

4-175
1
2 don't think it was a claim that he had ever been in the car.

3 Q You never saw the cigarette before trial, did you?

4 A I don't even recall seeing it at the trial.

5 Q Wasn't it the normal policy that evidence would be
6 sent over to the lab for examination and it would be kept sealed
7 in an envelope at the lab or in the custody of the police?

8 A About the only thing that would go away from the
9 Hamden Police Department would be something where they would
10 need a forensic analysis of blood or clothing, fingerprints.
11 Any other physical evidence would be kept in the Hamden Police
12 Department until just before trial or maybe a day or so before
13 trial.

14 Q Did you ever examine any of the physical evidence?

15 A I can't say yes and I can't say no. I don't recall.
16 I assume that it would be like when they brought in a box of
17 evidence, that I would see what was there.

18 Q That would be at trial you mean?

19 A No, prior to the trial or maybe the day of the trial.

20 Q You don't have any recollection of going out to
21 Hamden, and looking at the physical evidence found in the car?

22 A No. I say we had an open file policy with them but
23 they weren't going to show me everything.

24 Q To your knowledge, Mr. DeMayo would never have done
25 that either since that was your sole province?

A-176
1
2 A Policemen are naturally suspicious of attorneys
3 going through their files. I have a working relationship with
4 them that I wouldn't take anything out of the file that I
5 wasn't entitled to and based on that it was very successful
6 for the people that we represented.

7 Q So that to your knowledge Mr. DeMayo never went out
8 there to look at the physical evidence?

9 A I don't think so. I don't think they would allow
10 him to.

11 Q Did you ever conduct any investigations of the
12 scientific reports that were in the files such as the ballistics
13 or the fingerprints or autopsy?

14 A No. I think probably I may have read -- I'm sure
15 we would have had ample opportunity to do that at the coroner's
16 inquest and there was probably a copy of the proceedings before
17 the coroner's office that either Mr. DeMayo attended or both of
18 us attended, most times in the coroner's inquest both of us
19 would go --

20 Q That would be the autopsy report?

21 A The autopsy report and whatever evidence was presented
22 before the coroner.

23 Q You never did any scientific investigation into the
24 fingerprints or the ballistics or any of the findings in the
25 autopsy report?

A-177
1
2 A No. I didn't attach any significance to his finger-
3 prints being found in the car because he readily admitted
4 that he had been there.

5 Q Were there other fingerprints found in the car?

6 A Several I assume. As far as the ballistics, all
7 they had was the shell casings and there is no comparison
8 between them and the murder weapon. It's the only connection
9 you can have.

10 Q You never did any of those things?

11 A No.

12 Q That would have been your responsibility?

13 A Yes.

14 Q To your knowledge then Mr. DeMayo didn't do that
15 either?

16 A No, I don't believe so.

17 Q Did you ever make any attempt to find out if there
18 were other possible suspects who might have done this murder?

19 A Somewhere there we were trying to locate or find
20 someone who was seen talking to her outside of Ralls' house
21 or outside of her house and it was apparently three people
22 standing on the sidewalk talking, and I asked Ralls about who
23 this other guy was and he was very vague, that it was someone
24 from the neighborhood who was just casually saying hello. I
25 don't recall ever going into her background as to whether she

A-178

1
2 had enemies or such as that.

3 Q Do you recall ever discussing with Ralls the manner
4 in which he had been interrogated by the police after his arrest?

5 A I'm sure that I asked him if he had been warned and
6 advised of his rights and I asked him what he told the police.

7 Q Do you recall what he said when you asked him if he
8 had been advised of his rights? If you don't recall --

9 A I don't recall but I am sure that if he had questioned
10 -- if there was any question as to whether or not he wasn't
11 advised of his rights that Tony would have been made aware of
12 it immediately.

13 Q As a general policy in your office if there is any
14 question about rights, a motion to suppress would be filed?

15 A Yes.

16 Q And would you say that a motion to suppress would be
17 filed if there was any possible claim?

18 A If there was any point, yes.

19 Q If there was a possible claim even though it might be
20 resolved against the defendant is the policy of the office that
21 a motion to suppress would be filed?

22 A If there was a question as far as his rights was
23 concerned.

24 Q Would you say if there were a question, even if the
25 question might go against the defendant ultimately, a motion

A-179

1
2 to suppress would be filed to prove that?

3 A Yes, because we had nothing to lose by filing a
4 motion, no matter which way it went. It was a matter of not
5 only protecting the defendant's rights but also protecting
6 your own rights.

7 Q To your knowledge there was no motion to suppress
8 filed in this case, is that right?

9 A I don't believe there was.

10 Q Do you recall if there was a warrant for Ralls arrest?

11 A There was a bench warrant.

12 Q Was there any other student besides Paul Berg that
13 worked in the office?

14 A From time to time we would have students who would
15 come down voluntarily from Yukon or from Yale but I don't
16 recall them being there at this time. I know that either at
17 this time or a later time that Paul Berg brought another student
18 from Beloit College.

19 Q If Paul Berg didn't do this interview form, which is
20 marked as Plaintiff's Exhibit A for identification, do you
21 have any idea who would have done it?

22 A I know it's not my handwriting. I would say that
23 was Paul Berg's. I can't recall anybody else having to do
24 with that.

25 MR. GOLUB: Thank you, I have no further questions.

A-180

REDIRECT EXAMINATION

BY MR. DIETTE:

Q You mentioned a coroner's inquest. Was there a regular coroner's hearing?

A It was a homicide case.

Q Do you recall if you were present?

A I assume there was testimony at the coroner's inquest.

Q You assume there was?

A I --

MR. GOLUB: Can we go off the record.

(Discussion off the record.)

A I don't have any direct knowledge or I don't recall.

Q You don't recall exactly whether there was a coroner's inquest or whether there was not?

A No.

Q Earlier on in the course of Mr. Golub's questioning there was an indication that you got just about every lead that you had from the file from either the States Attorney's office or the police department. Would it be more accurate to say that you might have got it from Mr. Ralls himself and the files and the statement which he had given, which was after all a claim of his; there was a statement given, was there not?

A Yes.

Q It did outline Mr. Ralls' claims of what happened --

A-181
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2 A I am not sure that I gave a written statement.

3 Q But there was --

4 A There was a verbal exchange between him and McHenry.

5 Q The connection between Dunkin Donuts, the car wash,
6 the gasoline --

7 A That's what he offered in the way of an alibi --

8 Q So, in other words, in your investigation you did
9 not just follow in a knee-jerk fashion the States Attorney's
10 claim that he had this kind of information and, therefore,
11 you would go out and get it?

12 A No, we didn't follow in the footsteps of the States
13 Attorney's office or the Hamden Police Department. I talked to
14 him and he is the one that told me that Dunkin Donuts and the
15 car wash and the Atlantic gas station and after that he had no
16 recollection, and it was a little odd to go back to the States
17 Attorney or to the Hamden Police Department and, you know, see
18 what they have.

19 Q So it would be fair to say it was a combination of
20 factors that led to your various leads?

21 A Yes. As a matter of fact, I think I bumped into
22 some of the people from the Hamden Police Department in the
23 field working on the same case, some place along the line.

24 MR. DIETTE: No further questions.

25 RECROSS-EXAMINATION

A-182

BY MR. COLUB:

Q You mentioned that you had a good working relationship with the Hamden Police Department?

A Yes.

Q Were you a former police officer?

A Yes.

Q You indicated that Ralls' parents were reluctant to speak with you, is that right, because they had already given a statement?

A They were reluctant to make any statement of anything further than what they had already said.

Q During your duties as an investigator for the public defender's office do people sometimes confuse you with the prosecutor's office or confuse you with being a police officer?

A I don't think so. We all had identification cards, we had business cards printed up. Certainly at the jail or still to this day I can walk down Dixwell Avenue and people call me, "Hi, Mr. D." I have represented a majority of them at one time or another.

Q You don't think there was any confusion --

A I don't think so. They never indicated to me they were confused.

Q From your experience as an investigator and interviewer, would you say that the first person who conducts an interview

A-183

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2 can to a large extent control or suggest implicitly things to
3 the person he is speaking to that may later be repeated by that
4 person?

5 A I think that's a mark of a good interrogator, a good
6 investigator.

7 Q So a good investigator can shape a statement if he
8 tries, is that right?

9 A A good investigator and good interrogator can get
10 people to talk. As to how much he can shape it -- but the
11 biggest thing that you have to overcome is people's reluctance
12 to talk, particularly relatives.

13 Q I am not suggesting that you ever told anybody to lie
14 but I am asking you whether or not that first interview might
15 put a prospective on events in someone's head, is that possible?

16 A The closer to the incident that they talk to could
17 shape their recollection at a later date.

18 Q I am asking whether or not the prospective on the
19 events might be shaped by the way the interviewer asks questions,
20 whether, for example, a harmless incident might take on greater
21 meaning to someone because of the way an interviewer asks
22 questions, would you agree with that?

23 A I think so.

24 Q And then in subsequent interviews after that original
25 prospective was given the person who is being interviewed would

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A-184

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2 be likely to repeat what he had already said in that first
3 interview?

4 A I think so.

5 Q Would you say then that it would be important for
6 whichever side you were on, defense or prosecution or for what
7 ever reason you were interviewing someone, to get there for
8 that first interview?

9 A Yes.

10 Q Because in that first interview you could shape the
11 witness or effect the witness' prospective on events or you
12 could prevent the witness from adopting an incorrect prospective
13 on events?

14 A I guess so, yes.

15 Q Let me be a little more blunt about it. If you were
16 a police officer going in you would want the witness to
17 remember certain things in a certain way, isn't that right?

18 A I think you would ask the questions so that he
19 couldn't forget.

20 MR. DIETTE: Is there any way we can bring this
21 down to this case?

22 MR. GOLUB: We will do that in a second.

23 Q If you were going in as a defense interviewer you
24 would attempt to bring a different prospective to the interview
25 as well?

A-185

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2 A Yes.

3 Q On the one hand if you were the prosecutor, if you
4 were a police officer investigating a crime you might try to
5 stress certain aspects of conversations with the witness --
6 withdrawn. If you were a defense interviewer you would try
7 to minimize certain aspects of conversations, make the man
8 think they were unimportant or insignificant?

9 A That's correct.

10 Q And conversely if you were a policeman you might try
11 and increase the interviewee's recollection of the importance
12 of certain incidents?

13 A Definitely.

14 Q For example, again, take a threat, if you were aware
15 of a threat, if you were a police officer and you were
16 interviewing somebody you might try and suggest to the person,
17 I am not saying coach or have him lie, but you might try and
18 put the prospective to him that there was a real threat, that
19 it was a significant threat, isn't that right?

20 A Correct.

21 Q And if you were interviewing him for the other side
22 you would try and say well, was it a real threat or was it a
23 joke or was it the heat of the moment; is that right?

24 A Correct.

25 Q Wouldn't you agree that whichever side got to that

A-186

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2 witness first and suggested that prospective on the threat
3 that would be what he would remember, that first prospective?

4 A I think so.

5 Q In other words, if you had gotten to somebody first,
6 and we are talking in the abstract here, and said to him that
7 it wasn't a real threat, that was just a heat of the moment
8 threat, and later on when somebody else interviewed him that's
9 probably what he would be likely to repeat from your experience?

10 A I would think so.

11 MR. GOLUB: No further questions.

12 REDIRECT EXAMINATION

13 BY MR. DIETTE:

14 Q In your experience is it usual for the defendant's
15 investigator to get there before the police do on any crime
16 ever?

17 A I never had one of them surrender to me.

18 (Whereupon this deposition was concluded at 10:45 a.m.)
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EXHIBIT R: TRANSCRIPT OF DEPOSITION OF FRANCIS
MCQUADE, 11/19/75

A-187

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

:
JOHN RALLS, :
Plaintiff :
 :
vs. : CIVIL ACTION
 :
JOHN MANSON, : NO. H-75-107
Defendant. :

Deposition of Francis McQuade taken pursuant to
the Federal Rules of Civil Procedure, at the United
States Courthouse, 141 Church Street, New Haven,
Connecticut before Gerald Gale a Notary Public in and
for the State of Connecticut on Wednesday, November 19,
1975 at 9:30 a.m.

A p p e a r a n c e s:

DAVID GOLUB, Esq.
Attorney for the Plaintiff
777 Summer Street
Stamford, Connecticut

ERNEST DIETTE, Esq.
Assistant States Attorney for
New Haven County
County Courthouse
Church and Wall Streets
New Haven, Connecticut

S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties hereto, that all technicalities as to the proof of the official character of the authority before whom the deposition is to be taken are waived.

It is further stipulated and agreed by and between counsel for the respective parties hereto that the reading and signing of the deposition by the deponent are waived.

It is further stipulated and agreed by and between counsel for the respective parties hereto, that all objections, except as to form, are reserved to the time of trial.

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FRANCIS McQUADE, called as a witness,
having been first duly sworn by Gerald Gale,
a Notary Public in and for the State of Connecticut,
testified as follows:

DIRECT EXAMINATION

BY MR. DIETTE:

Q We are here taking a deposition on the John Ralls
matter and naturally you had a somewhat limited involvement
with that case. Could you give us some idea of your knowledge
of that case? Obviously you did not try it, but the claim
has been made --

MR. GOLUB: I think the question is sufficient
so he can give an answer.

Q What do you know about the case?

A I know it was a murder case, it was in the office,
that Mr. DeMayo was going to try. It involved, as I was aware,
as indicated in your question, I did not have any active part
in the preparation nor the trial of the case, except that it
was in the office and I knew it involved the murder of his
mother-in-law, I believe it was, and that there was a claim
on Mr. Ralls' part of an alibi.

As to specific details I knew that Mr. Donahue had
gone out and done some investigation on the case in an attempt
to substantiate the alibi, including goint over the scene and

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checking some times and distances, but other than that I am not that familiar with the case.

Q Taking you back to November, whatever it was, the date of the jury deliberation, the 17th, I take it you were called to replace Mr. DeMayo in the courtroom?

A Yes. I had been there during the afternoon and when it appeared that the jury was going to go beyond five o'clock, he had had an engagement previously scheduled that evening and he asked me if I would stay on while the jury was deliberating and I believe he had talked to the Judge, and as far as I knew the Judge indicated that it was -- my substitution would be all right.

Q Do you recall having been called up, say, approximately eight o'clock that evening to the courtroom?

MR GOLUB: There were a number of times I believe.

A There is a question on something like that.

Q The point I'm referring to is the rendition of what's basically called the Chips-Smith Charge.

A Yes.

Q Are you familiar with the Chips-Smith Charge?

A Yes.

Q Do you know its impact, supposedly, the times it's called for and things of that nature?

A Yes.

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Q Do you recall when the Court called on the jury and read them the Smith-Chips Charge, whether any facts of the case were discussed at that point in time?

A I don't recall.

MR. DIETTE: Can you refresh his recollection from something in the record?

(Discussion off the record.)

Q Having reviewed the transcript, is it now your recollection -- has your recollection been refreshed as to whether you were called upon to consider any factual issues in the trial itself at the time of the Chips-Smith Charge, so-called, was read to the jury?

A All I read was my answer. My recollection is refreshed and there was not any evidential matters discussed at 8:07.

Q You did not take any formal objection to the giving of the Chips-Smith Charge, is that right?

A Not on the record, no.

Q In your experience, I take it you have been around a while as a public defender?

A Yes. Seven years.

Q I think you stated that you are aware of the Chips-Smith Charge and when it is given?

A I have had it used in cases in which I have been trial counsel on a number of occasions.

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Q Along those lines would you say that the grounds, your own estimation, the grounds of that being an appealable issue, that that has been pretty well decided by our Supreme Court?

A Yes. I don't think that that's the full allowable Chips-Smith and I think my recollection is that I have serious objections to parts of Chips-Smith and I think we discussed those in chambers and some of them were left out, but on the record I did not take any objection to what was given.

Q The point I am trying to make is that the likelihood of that being grounds for reversal of the decision, your estimation I take it was it would not be?

A Absolutely.

Q So it would be a technical decision, an on the spot decision as to the feasibility of excepting to that, raising that as a ground of appeal?

A Well, not feeling that it's not a viable appealable issue. In fact whether to take an objection I think would be kind of a useless act.

Q Again getting back to the record, it is my recollection at least that about nine o'clock the jury was again called out, the jury itself came out with a question; do you recall that?

A I recall that they did, yes, but I would have to refresh my recollection any further than that.

2 Q Have you refreshed your recollection about what
3 transpired at nine o'clock that evening?

4 A Yes Sir.

5 Q There was a question, was there not, from the jury?

6 A Yes.

7 Q What was that question?

8 A My recollection is that it involved the jury's
9 duties, if they were to return a first degree murder verdict.

10 Q Do you recall the Judge's charge to the jury at that
11 time or --

12 A They asked would they be the sole determiners --
13 that's bad English, but to make the sole determination on the
14 penalty and his answer to them was yes.

15 Q You had no objection to that answer, I take it?

16 A Well, I indicated I would prefer questions to be
17 answered in Mr. DeMayo's presence rather than mine but that
18 was more of a legal question than a factual question, regarding
19 the facts of the case.

20 Q Also that you had no argument with the legal ruling
21 at that point in time made by the Court?

22 A No.

23 Q Also it would be fair to say, would it not, that
24 didn't involve the facts of this case one way or the other?

25 A No, it didn't.

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Q Wrapping it up, in your estimation both at the time of the Chips-Smith charge and the nine o'clock guidance given to the jury on the question we just discussed, at no point in time did any factual issues of the trial in this case, in your presence when the jury was called back in, is that correct?

A That is correct.

MR. DIETTE: No further questions.

CROSS-EXAMINATION

BY MR. GOLUB:

Q I have a few questions. I note that the nine o'clock session that you did object to the answering of any questions in the absence of Mr. DeMayo?

A That's correct.

Q Would it be fair to say that was because you were uncomfortable answering questions about a case you had not participated in?

A Obviously I would not -- I would prefer not to have factual questions answered in my presence when I had not tried the case. Additionally I thought that getting up to that time I preferred to have them come back when they were fresh in the morning, also that Mr. DeMayo would be there at that time.

Q As a matter of fact at the nine o'clock session the Judge indicated they had been deliberating through that night until they reached a verdict, at least by implication, isn't

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that correct?

A He sent them back. It had always been my understanding, at least in New Haven, that except in exceptional cases ten o'clock was kind of an unwritten cutoff time.

Q You would say that just as a general matter of practice, it would be in the defendant's interest not to have the jury deliberate into the night?

A Well, in anybody's interest. I don't think you should drive the jury to a verdict by keeping them there, wearing them down, so to speak.

Q With respect to the Chips-Smith charge, you have indicated your familiarity with it both in terms of trial practice and as an appellate issue?

A Yes.

Q So I would suppose that you are also familiar with the fact that the Chips-Smith charge or the Allen charge, as it's known in the federal system, is continually the subject of appellate review and criticism?

A Yes.

Q Are you aware of the fact that appellate courts throughout the nation have as a matter of judicial --

MR. DIETTE: I'll object to the form of this question.

Q You are aware of the decisions that have continued

to come down concerning the Allen charge and the Chips-Smith charge in courts throughout the nation, generally aware?

A At best. I am not as familiar with out of state decisions maybe as I should be but at least in Connecticut it didn't appear that the Connecticut Supreme Court was going to make any major changes in Chips-Smith.

Q You did feel that the Chips-Smith charge was objectionable, didn't you?

A Yes, I did.

Q That was a murder-one case at the time that the jury was deliberating?

A Yes. Excuse me, if I may go back, I felt that parts of Chips-Smith were objectionable. At least I felt they were objectionable. Those parts were left out.

Q You said that Mr. DeMayo had a previous engagement that evening. Do you recall what that previous engagement was?

A Yes. It was in Hartford. He was going to the opera.

MR. DIETTE: I will object to the form of that. Mr. DeMayo was here and he is the best evidence of that.

MR. GOLUB: If the witness knows. This is not going to the form.

MR. DIETTE: I will object to the form.

Q Do you recall what the engagement was?

A Yes.

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Q What was the engagement?

A As I recall it was a special staging of an opera in Hartford.

Q You indicated that you had no active part in the preparation of the trial of the case?

A That's correct.

MR. GOLUB: No further questions. Thank you very much.

REDIRECT EXAMINATION

BY MR. DIETTE:

Q In addition to the fact that there was, as you indicated, a watered down version of the Chips-Smith charge, was there not also a claim from the Court that in fact that had been given previously in the charge in chief?

A I believe that was what the Court indicated. It was what he had given them earlier.

Q In point of fact Mr. DeMayo had not objected to its inclusion in the charge in chief?

MR. GOLUB: I will object. The record speaks for itself.

MR. DIETTE: Let him refresh his recollection. The court won't have that document.

MR. GOLUB: It will have that. All it indicates is that it was given earlier.

MR. DIETTE: That was part of the conversation that took place between the Court and Mr. McQuade.

Q Read what you have there.

A The Court indicates, "Do you have any exceptions," and I repeat exactly what I gave this morning, while Mr. DeMayo was present and I said I would if they would draw any inference from the fact that he was not here.

Q The point to be made, it is true that you were advised of the fact that the charge had already been given in that modified form?

A Yes, that's what the Court indicated to me.

RE CROSS-EXAMINATION

BY MR. GOLUB:

Q Do you feel there was a possibility that the jury might draw a negative inference against Ralls because his original counsel wasn't present?

A No.

Q Was it a possibility in your mind when you made the comment to the Court that you just referred to?

A To me all of those possibilities certainly run through my mind when I am trying a case, not knowing what a jury is going to pick up or what a jury is going to think. You try to think of all possibilities.

Q On any case that you have tried have you ever departed

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during jury deliberations?

A Yes.

MR. GOLUB: Nothing further.

MR. DIETTE: Nothing further.

(Whereupon this deposition was concluded at
9:50 a.m.)

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EXHIBIT S: TRIAL TRANSCRIPT RE: RALLS' INVOCATION
OF RIGHT TO SILENCE (PP. 255-6)

Q When you got this defendant back to the Hamden Police Department, did you have any conversation with him here that you remember?

A Yes.

Q What happened then?

A Mr. Ralls stated that he was hungry, that he hadn't eaten all day, and I sent out for submarine sandwiches and coffee and soda. He had a submarine sandwich. I am not sure if he had coffee or soda.

Q Did there come a time when he received a call from anyone at the Hamden Police Department?

A Yes.

Q And who was that?

A At 8:00, I received a call from Attorney Schaffel, who stated that he represented Mr. Ralls and wanted to speak with Mr. Ralls on the phone. I handed the phone to John Ralls,

and he spoke with Mr. Scheffel. When he got off the phone, he stated, on the advice of his attorney, he was not going to carry on any further conversation with the police. I respected his wishes, and terminated any further interview with him.

Q And that was the last contact you had with him as far as interviewing him?

A Yes.

MR. SPERANDEO: You may inquire.

THE COURT: Before Mr. DeMayo proceeds, let me caution the jury that after speaking with his attorney, he had a perfect constitutional right not to discuss anything further with the officers. It is not to mitigate against him. Go ahead, Mr. DeMayo.

MR. DeMAYO: Thank you, your Honor.

EXHIBIT T: TRIAL TRANSCRIPT RE: RALLS' ALLEGED
BAD CHARACTER (PP. 169-175)

GWENDOLYN RALLS, 2115 Mohegan Avenue,
Bronx, New York, called as a witness, being duly sworn,
testified on her oath as follows:

DIRECT EXAMINATION

BY MR. SPERANDEO:

Q Mrs. Ralls, you are still married to the defendant, John Ralls?

A Yes.

Q How many children do you have as a result of the marriage?

A Three.

Q Are you separated from him?

A Yes.

Q When did you separate from him?

A September 20, 1969.

Q After you separated from him, did you go any place?

A Yes.

Q Where did you go?

A I went to New York.

Q Why did you go to New York?

✓ A I had no other choice, because the reason why I left him is because he stabbed me in my arm. He stabbed me in my leg. So if I didn't run away, maybe I would be dead.

Q Did you ever have any conversation with your husband regarding your mother?

A In what way? Yes. We have had several conversations regarding her. In fact, ever since we were married,

he always had the idea the she didn't want us to be married, and he always accused her of interfering in our, you know -- and our affairs, which she didn't, and he always said she disliked him from the time we were married up until then.

Q Did he ever threaten your mother in your presence?

✓ A Several times. He said that he would, you know, he would -- he was going to kill both of us.

Q When was the last time, if you remember, when he threatened to kill both you and your mother?

A It was, I think, back in May of 1969. I think I had him arrested for aggravated assault, and he says I am just like my mother. "Keep on," he says, "and I am going to kill both of you."

Q You weren't in New Haven on March 1, 1970, were you?

A Pardon me?

Q You were not in New Haven?

A No.

Q Were you in New York on that date?

A Yes.

MR. SPERANDEO: You may inquire.

CROSS-EXAMINATION

BY MR. DeMAYO:

Q The last time that your husband is supposed to have threatened you and your mother was in May of 1969?

A No. He said had there been a time -- but the last time he threatened me, he had threatened me since then.

Q Since May? A Since May, yes, me.
He said me and my mother, but --

Q The last time he threatened your mother?

A I mean he didn't threaten in my presence. He said, "You keep on. You are just like your mother." But he has threatened to kill me since then. In fact, it was in November, 1969, he says to me, "In two months," he says, -- "I'll tell you one thing. In two months time, I'll see you dead before you divorce me." And no one had even mentioned divorce to him at the time.

Q Well, you are still with us. Let me ask you this: You weren't living with your husband in March of 1970 when this happened?

A No.

Q Your three children were with him?

A Yes.

Q How many children are with you now?

A I have one.

Q Are you aware of the services of the State of Connecticut that provides for marital disputes?

MR. SPERANDEO: Well, I object to this.

MR. DeMAYO: I claim it, your Honor. It is very significant at this point.

THE COURT: What is this preliminary to?

MR. DeMAYO: Inquiring as to what she may have or not have done with respect to these alleged threats.

THE COURT: I am going to allow it subject to its being connected, or I am going to ask the jury to strike it at the right time.

Q (By Mr. DeMayo) Do you know of any service that the State of Connecticut provides to our courts to handle marital discord and marital problems?

A I have been, but they didn't do anything to help us.

Q Just answer me.

THE COURT: Do you know?

THE WITNESS: Sure.

Q (By Mr. DeMayo) Have you been to them?

A Yes.

Q Did you describe to them your situation?

A Yes.

Q Did they have occasion to sit down and speak to you and your husband?

A I only knew of once.

Q You only went once? A Once.

Q When these threats were being made, did you report these threats to anybody?

A Yes.

Q Did they result in any discussions or any conferences about the problem?

A No.

Q How long had you been in New York on March 1, 1970?

A Since September of 1969.

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Q Had you been back to New Haven at all to see your husband or talk to your husband?

A No.

Q Had you visited the children in between that period of time?

A No.

Q When had you talked to your mother last?

A I talked to my mother on Thursday, February 26.

Q And prior to February 26, when had you seen your mother last?

A The previous Sunday.

Q The previous Sunday? So I take it you saw her once a week approximately?

A No. It wasn't once a week. Just by some coincidence that I had seen her, you would say, twice in that week.

Q I see.

MR. DeMAYO: I have nothing further.

RE-DIRECT EXAMINATION

BY MR. SPERANDEO:

Q Mrs. Ralls, Mr. DeMayo asked you if you reported these threats to anyone. Did you have occasion to call the police?

A Yes. I called the police. The last time I called the police was May, in May, for the aggravated assault charge.

Q Is that when he stabbed you?

A Yes. No. Not when he stabbed me. In May,

aggravated assault, that's when he hit me with a Scotch bottle, and it was in September when he stabbed me.

Q What year? A 1969 he stabbed me once on the 17th of September in the leg, and then that following Friday, he came back and he said to me, he said, how stupid I was to stay here, he said, "I gave you a chance and you didn't leave, so now I'm going to finish you up." He took something like a paring knife out of the kitchen. I was in the bedroom with some culotte-type pajama on, and he shredded them. He, you know, took the knife and cut them in shreds, and this is the stab mark here on the arm, where he did it the last time, but he did it on the leg on that Wednesday.

Q Thank you, Mrs. Ralls.

MR. SPERANDEO: I have no further questions.

MR. DeMAYO: Just one second.

RE-CROSS-EXAMINATION

BY MR. DeMAYO:

Q This stabbing episode, tearing-up episode happened September of 1969?

A Yes.

Q Did you call the police?

A Then I didn't, no.

Q You didn't? A No.

MR. DeMAYO: Nothing further.

FURTHER RE-DIRECT EXAMINATION

BY MR. SPERANDEO:

Q Is that when you left and went to New York?

A Yes. That's when I left and went to New York.

Q Thank you.

THE COURT: You may step down. Next witness.

EXHIBIT U: TRIAL TRANSCRIPT RE: RALLS' FINGERPRINT
CARD (PP. 82-84)

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Q. Okay. Now, to get back to this fingerprint, I believe you testified that there were five latent prints delivered to you by Detective Cafano of the Hamden Police Department? A. Yes, sir.

Q. Did you compare any of them with fingerprints of John Ralls the defendant in this case? A. Yes, I did.

Q. Did you find, in your opinion, as to whether or not any of the latents compared favorably with the fingerprint card of John Ralls? (Tr. 82) A. Yes, I did.

Q. Showing you this fingerprint card, Sergeant, can you tell me whose fingerprint card that is? A. This is a fingerprint card of John Ralls, which was on file at the Bureau of Identification, also C.S.P.I. 227299.

Q. What is the C.S.P. number? A. It is a central bureau for all the criminal arrest records in the State of Connecticut.

Q. All right.

The Court. Just a moment. I ought to caution this jury at this particular time, that whatever it was, it might have been just a minor matter. I don't know the extent of it. It doesn't affect this case, nor is it introduced for that purpose.

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Mr. SPERANDEO. Positively not.

Mr. DEMAYO. I think at this point the jury ought to be excused.

The COURT. All right. I will excuse the jury.

(The jury left the courtroom.)

Mr. DEMAYO. Your Honor, we went through a rather elaborate precaution to avoid any mention of where this card came from.

The COURT. I am sure the witness didn't know about it.

(Tr. 83)

Mr. DEMAYO. But he shouldn't have been asked to identify what this was.

Mr. SPERANDEO. I did not have a chance to ask the further question as to this witness not knowing anything about the facts of this card, just the card was taken. The jury certainly, with all common sense, will know that fingerprints had to be taken from someplace, and I was just about to ask the question whether or not he just compared these prints. That's all.

The COURT. As I say, I think I could duly caution the jury on it. I don't feel it is grounds enough for me, at this point, to declare a mistrial, but I think it is dangerously real close to it.

Mr. DEMAYO. I will move for a mistrial.

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The COURT. I will overrule it, and note an exception.

Mr. DEMAYO. Thank you, your Honor.

The COURT. You may recall the jury.

(The jury returned to the courtroom.)

The COURT. Thank you. You may proceed.

Mr. SPERANDEO. Thank you, your Honor. I want to make it perfectly clear that the only purpose of offering this card is to show that Sergeant McDonald compared a latent print with the prints of John Ralls.

(Tr. 84)

The COURT. Okay. I want to caution the jury again, that I don't know what the extent it covers, whether it might have been some minor matter, or it may have been an application for employment. You are not to give it any more weight than that. This man is being tried here on this case only.

Mr. SPERANDEO. May it be marked, your Honor?

The COURT. It may be marked State's Exhibit S.

(The above-mentioned fingerprint card of John Ralls was received and marked State's Exhibit S.)

Q. (By Mr. Sperandeo) Now, Sergeant, did you compare any of the latent prints lifted from the Howell automobile with State's Exhibit S? A. Yes, I did.

EXHIBIT V: TRIAL TRANSCRIPT RE: HEARSAY THREATS
(PP. 185-6, 166-8)

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THE WITNESS: Yes, sir.

THE COURT: You remember what you said?

THE WITNESS: Yes.

THE COURT: You may call in the jury.

MR. SPERANDEO: Thank you, your Honor.

(The jury returned to the courtroom.)

THE COURT: You may proceed, sir.

DIRECT EXAMINATION BY MR. SPERANDEO (Continuing):

Q Now, Donald, you have heard the tape recording of your statement to the police, have you not, in the absence of the jury?

A Yes.

Q Did the playing of that tape recording refresh your memory?

A Yes. I remember saying that.

Q So now you remember saying that your brother showed you a .32 automatic on Friday, and again showed you the .32 automatic on Saturday?

A Yes.

Q And how did he get along with his mother-in-law?

A I guess he got along same as any normal man would. My brother used to drink a lot, and when he would drink, he would argue, I mean, find faults.

Q Isn't it true that he felt that she was keeping he and his wife apart?

A Yes.

Q So now do you remember saying, in answer to a

question, "Tonight my mother told me that John had told her
✓ that he was going to kill her or get his mother-in-law, and
his wife wouldn't live to see Monday"? You remember saying
that now, don't you?

A Yes.

MR. SPERANDEO: Your Honor, excuse me for one
moment, and ladies and gentlemen.

Q (By Mr. Sperandeo) Have you ever been
known by the name of Joseph Rawls?

A Have I?

Q Yes. A No. I have a brother
named Joseph.

Q You have a brother?

MR. SPERANDEO: You may inquire, Mr. DeMayo.

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A Yes.

Q Do you understand you are here to tell us only the truth, and you will be asked questions, and you will tell them nothing but the truth, is that correct?

A Yes.

THE COURT: All right, you may swear her in.
I feel she understands it.

JACQUELYN RALLS, 109 Lilac Street, New Haven, Connecticut, called as witness, having been duly sworn, testified on her oath as follows:

DIRECT EXAMINATION

BY MR. SPERANDEO:

Q Jacky, do you remember that Sunday morning when your father brought clothes back to the house at 109 Lilac Street?

A Yes.

Q Did you see him come in the house with the clothes?

A Yes.

Q Did you then see him leave the house?

A Yes.

Q Do you know approximately what time it was?

A No, I don't.

Q All right. Was there someone out in front of the house in a car?

A Yes.

Q Who was out there?

A My grandmother.

Q Your grandmother? What was her last name?

A Howell.

Q What color car was she in?

A It is sort of reddish Chevy.

Q A reddish Chevy? A Yes.

Q Did you see your father get in the car?

A No, I didn't.

Q Did you see the car go away?

A No.

Q Did your father say anything to you about hurting your grandmother that morning?

A No, he didn't.

Q Did he say anything to any one of your sisters in your presence?

✓ A My sister said that he said he was going to hurt my grandmother, but I asked him and he said no.

MR. DOMAYO: I ask your Honor to instruct the jurors, of course.

THE COURT: Yes. Go ahead. I will let her answer, and I will instruct them later all at once. Of course, at this point this is something the sister said, and is clearly hearsay as far as --

MR. SPERANDEO: I asked if it was in the presence of the father.

THE COURT: Presence of the defendant?

MR. SPERANDEO: Yes. Would you read the

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question?

(The following question was read by the reporter: "Did he say anything to any one of your sisters in your presence?")

THE WITNESS: He said no.

MR. SPERANDEO: May the full answer be read back?

THE COURT: Yes. Read the answer.

(The following answer was read by the reporter: "My sister said that he said he was going to hurt my grandmother but I asked him and he said no.")

Q (By Mr. Sperandeo) Did you ever see your father with a gun in the house?

A No, I didn't.

MR. SPERANDEO: You may inquire.

MR. DeMAYO: I have nothing to ask this witness. How old are you?

THE WITNESS: Nine.

MR. SPERANDEO: Thank you, Jacquelyn.

THE COURT: You may step down.

MR. SPERANDEO: Mrs. Ralls, will you take the stand, please.

✓ MRS. RALLS: You did do it.

THE COURT: Just a moment. I will not have another outburst in the courtroom.

EXHIBIT W: TRIAL TRANSCRIPT RE: SUPPLEMENTAL
JURY INSTRUCTIONS (PP 347-352)

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(Tr. 347)

(The jury began deliberations at or about 2:15 p.m.)

(At or about 5:00 p.m. the following occurred:)

The COURT. Resume our session. You may call the jury.

(The jury returned to the courtroom.)

The COURT. I have called you all because of the hour. I am not trying to hurry your deliberations at all. I want you to have time enough to consider them, and con-

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sider them with all the thought that you can. However, I would like to know if it is a matter of a couple of hours, I can send out and get sandwiches. If it is a matter of more than that, and you want to have dinner, it can be arranged. I can send out and make those arrangements. I cannot allow you to leave before I have some sort of a verdict.

You could recall, see, if somebody got sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility.

Is anybody in a position to tell me how long you feel that you want, or whether sandwiches would do, or would you like a sit-down dinner?

A JUROR. I think it is going to be a while.

The COURT. That is all I need to know. You may retire to the jury room, and arrangements will (Tr. 348) be made. Thank you very much.

(The jury retired to the deliberation room.)

(Recess.)

(At or about 8:07 p.m. the following occurred:)

The COURT. Resume our session. Call the jury.

(Francis J. McQuade, Esquire appeared in Mr. DeMayo's stead.)

The COURT. Good evening ladies and gentlemen, I sense that you must be having a little difficulty in reaching your verdict. However, as I have told you time and

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again, your verdict must be unanimous. It is true, of course, that a verdict to which each juror agrees, has got to be his own conclusion and not the mere acquiescence in or the conclusions of his fellows.

That does not mean that each juror should pursue his own deliberations and judgment with no regard for the arguments and conclusions of his fellows, or that having reached a conclusion, he or she should obstinately adhere to it without a conscientious effort to test its validity by the views entertained by the other jurors.

I am not telling you what to do. I am going to send you back in. Follow that theory, that you will resolve yourselves to do your duty and follow the thoughts of other jurors whom, I am sure, are equally as wise and have heard the same (Tr. 349) evidence. You may return to the jury room, and I hope it has shed some light. Thank you.

(The jury returned to the deliberation room.)

The COURT. Do you have any exceptions? I repeated exactly what I gave this morning when Mr. DeMayo was present.

Mr. McQUADE. I would, if they would draw any inference from the fact that he isn't here.

The COURT. No, I shouldn't say so. If you want me, I will call them back in and explain to them. I don't think I pointed out anything, and I am sure they wouldn't, but I will do it if you want.

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Mr. McQUADE. I don't really see any need.

The COURT. I don't think it is necessary, but I will do it if you wish.

(Recess.)

(At or about 9:00 p.m. the following occurred:)

The COURT. Call the jury.

(The jury returned to the courtroom.)

The COURT. Ladies and gentlemen, I have the question which you sent out to me, and it reads as follows: "In case of a murder one verdict, are we the sole judges of penalty of life imprisonment or death?"

The answer to that is yes. In the event of a murder in the first degree verdict, you will not (Tr. 350) deliberate further tonight, but tomorrow morning you will come in and you will listen to further evidence before you decide what to do, and at that time, you will decide if you want to make it life imprisonment, or if you want to make it the death penalty.

You may be excused and return to the jury room. You will knock upon the door when you have reached a verdict. Recess.

(The jury returned to the deliberation room.)

The COURT. Yes, sir?

Mr. McQUADE. I think I should probably put on the record, your Honor, that I would have to object to the answering of any questions in the absence of Mr. DeMayo.

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The COURT. Well, he certainly left you here in his place and in his stead. I certainly would have to answer it. I couldn't very well say to them that they can't have an answer because Mr. DeMayo is not here. I don't know of any other way I could answer that, do you?

Mr. McQUADE. No, I don't. But, I think, to protect the record, I didn't know there was a question. In fact, nobody had come down to get me.

The COURT. That may be made part of the file. Thank you. We will recess until we hear (Tr. 351) from the jury.

(Recess.)

(At or about 9:10 p.m. the following occurred:)

The COURT. Resume our session. Recall the jury.

(The jury returned to the courtroom.)

The COURT. You may proceed, sir.

(The Clerk took attendance and all jurors were present.)

The CLERK. Ladies and gentlemen of the jury, have you agreed upon your verdict?

The FOREMAN. We have, your Honor.

The COURT. Will you stand up, and face the jury, Mr. Balls.

The CLERK. Ladies and gentlemen, look upon the accused. What say you, Mr. Foreman —

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The FOREMAN. We find the defendant —

The CLERK. Hold it. Is he guilty or not guilty as charged?

The FOREMAN. Guilty of murder in the second degree.

The COURT. Guilty of murder in the second degree. Your verdict may be accepted and recorded.

The CLERK. Ladies and gentlemen of the jury, listen to your verdict as it is accepted and ordered recorded by the Court. You, ladies and gentlemen of the jury, and each of you do say (Tr. 352) unanimously that the accused is guilty of the crime of murder in the second degree, and so say you all?

The JURY. Yes, we do.

(Whereupon the jury was discharged and court was adjourned.)

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EXHIBIT X: OPINION OF THE CONNECTICUT
SUPREME COURT, STATE V. RALLS,
167 CONN. p. 408 (1974)

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are included in the finding to support this. Moreover, the facts as previously noted in the appendices make it clear from the plaintiffs' course of conduct that they acted only on their own judgment that an agreement would be reached and that the letter of intent executed May 13, 1966, was a firm agreement. As the finding that the plaintiffs acted reasonably and in reliance upon representations made by the defendant is attacked and cannot be supported by the evidence in the appendices, it is stricken. Without this finding, the subordinate facts indicate only that the funds were expended voluntarily by the plaintiffs in a calculated business judgment, with its inherent risks, not induced by any conduct of the defendant but in reliance upon a mistaken belief that the parties had executed an enforceable agreement to lease. Considering the equity principles as previously outlined, the plaintiffs are not entitled to recover damages in quasi contract. It is unnecessary to consider the other assignments of error.

There is error, the judgment is set aside and the case is remanded with direction to render judgment for the defendant.

In this opinion the other judges concurred.

STATE OF CONNECTICUT v. JOHN W. RALLS

HOUSE, C. J., SHAPIRO, LOISELLE, MACDONALD and BOGDANSKI, JR.

Convicted on sufficient evidence of the crime of murder in the second degree, the defendant appealed, claiming, *inter alia*, that he was prejudiced because his fingerprint card and the testimony surrounding its admission tended to prove his commission of crimes other than that charged. Since the fingerprint card revealed no actual evidence of past crimes but only an implication of arrest without any indication of conviction, and since

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State v. Ralls

that implication was dispelled by cautionary instructions to the jury as to the limited purpose for which the card was offered, no error was committed in admitting it into evidence.

Since an assistant public defender was present both when supplemental instructions were given the jury and when the verdict was received, there was no merit to the defendant's claim that because his public defender was not present at those times he was denied assistance of counsel at critical stages of the proceedings.

The trial court's decision to hold the jurors beyond the usual dinner recess to, as was explained to them in open court, avoid a mistrial did not, under the circumstances which obtained here, constitute an order to them to decide the case. There was at that time no evidence of a deadlock; furthermore by subsequent instructions from the court they were advised that their verdict had to be unanimous and that each of them had a duty carefully to consider the views and opinions of the others.

(One judge dissenting)

Since statements made by the defendant while in police custody were properly admitted into evidence, the defendant's claim that because his trial counsel failed to object to that evidence, he was denied effective assistance of counsel could not be sustained.

Argued October 1—decision released December 31, 1974

Indictment charging the defendant with the crime of murder in the first degree, brought to the Superior Court in New Haven County and tried to the jury before *George, J.*; verdict and judgment of guilty of murder in the second degree and appeal by the defendant. *No error.*

John R. Williams, for the appellant (defendant).

Ernest J. Diette, Jr., assistant state's attorney, with whom, on the brief, were *Arnold Markle*, state's attorney, and *Richard P. Sperandeo*, chief assistant state's attorney, for the appellee (state).

LOISELLE, J. The defendant, John W. Ralls, was indicted by a grand jury for the crime of murder in the first degree in that he "wilfully, deliberately and

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premeditatedly did shoot one Barbara Howell . . . in violation of section 53-9 [repealed by Public Acts 1969, No. 828, effective October 1, 1971] of the General Statutes of Connecticut." A jury returned a verdict of guilty of murder in the second degree. The defendant has appealed.

Of the sixty-three assignments of error advanced by the defendant, thirty have not been briefed and are considered abandoned. *State v. Weston*, 164 Conn. 635, 636, 325 A.2d 457; *State v. Bitting*, 162 Conn. 1, 3, 291 A.2d 240.

The remaining thirty-three assignments of error, variously presented, form the issues on this appeal,¹ and specifically involve claims that: (1) the evidence was insufficient to support a verdict; (2) errors were

¹Since the offers of proof are unnecessary to a determination of these issues, the assignments of error which seek corrections in them need not be considered. *State v. Ferraro*, 164 Conn. 103, 105, 318 A.2d 80. Ordinarily, however, the validity of a claim which goes to the substance of the court's charge or the refusal to charge is tested by the claims of proof. Practice Book §§ 609, 635; *State v. Edwards*, 163 Conn. 527, 528, 316 A.2d 387; *State v. Brown*, 163 Conn. 52, 58, 301 A.2d 547. Of the nine assignments of error directed to the finding, one is irrelevant to the issues briefed. The remainder request additions to the finding which would expressly indicate the court's failure to instruct on, comment on or strike testimony or which would indicate the public defender's failure to move to strike, object to or request instructions on the evidence. These requested corrections are implicit in the finding as set forth. A finding need not be in language identical with the draft finding. *Walsh v. Turluck*, 164 Conn. 75, 77, 316 A.2d 759. Moreover, where these requested inclusions are relevant to the defendant's claim of incompetent counsel they are unnecessary. When such a claim is raised the entire record and transcript may be used to review the omissions and commissions of defense counsel. *Palmer v. Adams*, 162 Conn. 316, 323, 294 A.2d 297; *State v. Costello*, 160 Conn. 37, 40, 273 A.2d 687. Since they are unnecessary, the requested corrections will not be made. See *Lewis v. Lewis*, 162 Conn. 476, 481, 294 A.2d 637.

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committed in the admission of evidence; (3) the court's supplementary charge was coercive; and (4) effective assistance of counsel was denied.

The defendant claims that there was insufficient evidence to submit the case to the jury, and hence, it was error to render judgment on the jury's verdict. This issue must be tested by the evidence presented in the appendices to the briefs. *State v. Cobbs*, 164 Conn. 402, 424, 324 A.2d 234; *State v. Kearney*, 164 Conn. 135, 136, 318 A.2d 100; *State v. Mayell*, 163 Conn. 419, 421, 311 A.2d 60. From the evidence printed in the appendix to the defendant's brief, the jury could reasonably have found the following facts: On Sunday, March 1, 1970, at about 1 or 1:30 p.m., the body of Barbara Howell, the defendant's mother-in-law, was discovered on the floor of a red Chevrolet parked behind the First National store on Dixwell Avenue in Hamden. Death had occurred between 9 and 11 a.m. that day, and had been caused by multiple gunshot wounds to the head and chest from a .32 caliber semiautomatic pistol.

A search of the automobile revealed three spent .32 caliber cartridge casings, and one expended .32 caliber bullet. Two other bullets were removed from the victim's body. Of the five latent fingerprints lifted from the interior of the car, the only fingerprint with sufficient identifying characteristics was a thumbprint of the defendant taken from the right vent window.

At the time of the murder, the defendant was separated from his wife and lived with his three daughters at the home of his parents. Gwendolyn Ralls, the defendant's wife, left him in September, 1969, after he had stabbed her in the leg. In May, 1969, she had Ralls arrested for aggravated assault

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after he hit her with a bottle. The defendant, on several occasions, had threatened to kill her and her mother, Barbara Howell.

Around 5 a.m. on March 1, 1970, Ada Rawls, the defendant's mother, told the defendant to call his sister who had received a letter for the defendant from his wife. The defendant made the telephone call, and, after speaking, he became upset and went to bed. Mrs. Rawls did not know about the defendant's feelings towards his mother-in-law but admitted that she had previously told the police that he had threatened to "get" his wife and his mother-in-law.

The defendant left his home on March 1, 1970, around 9 a.m. and drove his car, a black Oldsmobile, to the home of Barbara Howell to pick up some clothes for his three children. The defendant returned home with the clothes, left again and was seen driving away with the deceased in her Chevrolet shortly before 10 a.m. The defendant came home around 3 p.m. that afternoon, went out, returned at 6 or 7 p.m. that evening and then left again.

The defendant's daughter, Sharron, aged eight, had seen a gun when her sister, Michelle, aged five, had laid it on the floor of their bedroom in the presence of her sister Jacquelyn and herself. Jacquelyn, aged nine, testified that her sister had told her that their father was going to hurt their grandmother, but that she asked him and he said "no."

Donald Rawls, the defendant's brother, had seen the defendant with a gun on the two nights before the Sunday that Mrs. Howell was killed. Donald Rawls told the police that the gun he had been shown

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by the defendant was a .22 automatic. The defendant had told him that Gwendolyn, the defendant's wife, would not live to see Monday.

The defendant went to the apartment of Samuel F. Bowens in West Haven on March 1, 1970, sometime between 10:30 and 11 a.m., and asked Bowens to cash a \$500 United States Chemical Corporation check. The defendant had owed Bowens some money and received \$300 for the check. Ralls left about 11 a.m. Bowens did not see any car driven by the defendant, but the defendant had said nothing about his car running out of gas or breaking down.

Charles Cook, the defendant's coworker at United States Chemical, had seen the defendant one day at work in February, 1970, with a gun which appeared to Cook to be an automatic. Also, in February, 1970, the defendant had said to Donna Burkman, office manager for United States Chemical, where the defendant was employed, that if he had had a gun "last night" he would have killed his mother-in-law, his mother and his three children. He stated to her that his mother-in-law interfered in his marriage. After the homicide, on March 2 and 3, Donna Burkman discovered that two payroll checks made out to Ralls in advance and five blank checks, as well as \$80 in petty cash, were missing from the office. One of the blank checks was the \$500 check which Bowens had cashed on March 1, 1970.

On the afternoon of Wednesday, March 4, 1970, the defendant went to Samuel Bowens' apartment and spoke with Mrs. Bowens for about ten minutes when the police arrived and arrested him at approximately 5:30 p.m. At the time of his arrest the defendant had in his possession an envelope containing four checks and a petty cash receipt.

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When asked by the arresting officer about the weapon used to shoot Mrs. Howell, the defendant denied ever having a gun. He was taken to the West Haven police department and booked. While being transported to the Hamden police department for photographs and fingerprints, the defendant told detectives that on Saturday evening, February 28, 1970, his automobile had broken down in West Haven on Orange Avenue in front of a Dunkin' Donut shop. He left his car and hitchhiked a ride home from an unknown male. The next morning, March 1, he started to walk to the home of Barbara Howell to pick up his children's clothes and on the way met James Senior who drove him to the Howell home. The defendant stated that Barbara Howell drove him home where he dropped off the clothes at about 9:45 a.m. He told Mrs. Howell that his car had run out of gas; he asked her to drive him to his car on Orange Avenue by the Dunkin' Donut shop in West Haven. They first stopped at an Atlantic gas station on the corner of Goodrich Street and Shelton Avenue to fill a gas can which was in the Howell car and then drove to the Orange Avenue Dunkin' Donut shop in West Haven. He transferred the gas to his car, started his car, and returned the gas can to Mrs. Howell. That was the last he saw of her. The defendant stated this was around 10:15 or 10:30 a.m. He said he returned home, went out, came back and went out again. The defendant explained that later that evening he learned that Mrs. Howell had been murdered, and that he went into hiding because he knew he would be blamed. The defendant at all times denied his guilt to the police.

The defendant's account to the police of his activities was contradicted by several witnesses. James Senior saw the defendant on March 1, between 10:30

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and 11 a.m., walking away from Dixwell Avenue where the body of Barbara Howell had been discovered. The defendant got into Senior's car and asked Senior to drive him to his car on Winchester Avenue, the street on which Barbara Howell lived. The ride took about three minutes. There had been no reports to the police about a disabled car in front of the Dunkin' Donut shop on Orange Avenue on the night of February 28, 1970.

Neither an employee of Dunkin' Donuts nor the manager of a car wash next door observed a disabled vehicle in the street when he arrived at work early in the morning on Sunday, March 1. Finally, the two men who were working at the gas station where the defendant said he and Barbara Howell had stopped testified that they had not sold gasoline in a gas can to anyone that morning. No gas can was found in the Howell automobile.

It is clear that the defendant's claim that there was insufficient evidence to support a jury verdict is 'totally without merit.'²

The defendant next claims that the admission into evidence of his fingerprint card denied him due process of law. During testimony by Sergeant

²At the conclusion of the state's case, defense counsel orally moved for dismissal on grounds that there was no direct evidence that the defendant had committed the crime. The denial of a motion to dismiss is not properly assignable as error. *State v. Dubina*, 164 Conn. 95, 101, 318 A.2d 95; *State v. Anderson*, 152 Conn. 196, 198, 205 A.2d 488. No subsequent motions for a directed verdict or to set aside the verdict were made. Hence, this issue is not properly before us. Practice Book § 652. We have considered this claim solely because appeal counsel points to the public defender's failure, inter alia, to move to set aside the verdict as support for a claim of ineffective assistance of counsel. See pp. 427-31, *infra*. In the face of the overwhelming evidence of guilt, it can hardly be said that these omissions are indicative of incompetency.

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James E. McDonald, a state policeman, concerning the fingerprints lifted from the interior of Barbara Howell's automobile, the sergeant identified the defendant's fingerprint card as one "which was on file at the Bureau of Identification, also C.S.P.I. 227299." In response to the question, "What is the C.S.P. number," Sergeant McDonald stated, "It is a central bureau for all the criminal arrest records in the State of Connecticut." The court interrupted with "Just a moment. I ought to caution this jury at this particular time, that whatever it was, it might have been just a minor matter. I don't know the extent of it. It doesn't affect this case, nor is it introduced for that purpose."

At defense counsel's request the jury were excused. In the absence of the jury the court expressed that it could duly caution the jury, but that it was dangerously close to a mistrial. The defendant's counsel moved for a mistrial, which the court denied. An exception was noted. When the jury returned, the prosecutor stated, "I want to make it perfectly clear that the only purpose of offering this card is to show that Sergeant McDonald compared a latent print with the prints of John Ralls." The court then cautioned, "I don't know what the extent it covers, whether it might have been some minor matter, or it may have been an application of employment. You are not to give it any more weight than that. This man is being tried here on this case only." The fingerprint card of the defendant was then received and marked as an exhibit.

While the state is technically correct in asserting that no specific objection was made to the card's admission, we feel that the defendant's motion for mistrial which went to the manner of in-court iden-

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tification of the card, a condition precedent to its being received in evidence, is sufficient objection to allow our consideration of the claim as advanced. *State v. Savage*, 161 Conn. 445, 449, 290 A.2d 221.

The contention is that the defendant was prejudiced because the fingerprint card exhibit and the testimony surrounding its admission tended to prove the commission of crimes other than that charged and unconnected with the case being tried. That evidence tends to prove the commission of other crimes by the accused does not render it inadmissible if it is otherwise relevant and material; *State v. Marshall*, 166 Conn. 593, 353 A.2d 756; *State v. Holliday*, 159 Conn. 169, 172, 268 A.2d 368; see *State v. Jenkins*, 158 Conn. 149, 152-53, 157, 256 A.2d 223; and if the trial judge determines in the exercise of judicial discretion that its probative value outweighs its prejudicial tendency. *State v. Moynahan*, 164 Conn. 560, 597, 325 A.2d 199, cert. denied, 414 U.S. 976, 94 S. Ct. 291, 38 L. Ed. 2d 219; *State v. Holliday*, supra, 173.

Under the principles of real or demonstrative evidence, authenticated fingerprints may be introduced into evidence and compared with other fingerprints found at or near the scene of a crime. 1 Wharton, Criminal Evidence (13th Ed.) § 192; 29 Am. Jur. 2d, Evidence, § 375. Such evidence as a useful system of identification has long been recognized and its admission, when competent, relevant and material, has long been accepted. *State v. Chin Lung*, 106 Conn. 701, 723, 139 A. 91.

The admission of a fingerprint record containing extraneous material which in itself is incompetent, however, may constitute reversible error depending on whether the evidence of past crimes has been

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masked or obliterated; see *Riley v. Sigler*, 437 F.2d 258 (8th Cir.); *Sibley v. United States*, 344 F.2d 103 (5th Cir.); *Moon v. State*, 22 Ariz. 418, 198 P. 288; *State v. Viola*, 82 N.E.2d 306 (Ohio App.); or whether the prejudicial matter was before the jury. See *United States v. Dressler*, 112 F.2d 972 (7th Cir.); *People v. Var Cleave*, 208 Cal. 295, 280 P. 983; *Manor v. State*, 223 Ga. 594, 157 S.E.2d 431; see also annot., 28 A.L.R.2d 1115, 1135-36.

Since all the exhibits have been certified to this court and the contents thereof have been made a part of the finding, we have examined the fingerprint card for such prejudicial material³ and have concluded that the exhibit as offered to the jury revealed no actual evidence of past crimes. The jury, at most, was exposed to an implication of arrest without any indication of conviction, which was dispelled by the court's cautionary instructions as to the limited purpose for which the fingerprint card was offered and as to the possibility that the prints were taken for a purpose unrelated to crime, such as employment. In this age and particularly in these times it is a matter of common knowledge that fingerprinting is used in numerous branches of civil service and is not itself a badge of crime. *Edmonds and Stanley v. State*, 5 Md. App. 132, 245 A.2d 618. Whenever a fingerprint card is introduced as evidence, however, an implication of criminal history potentially arises which, of course, should be dispelled. Certainly,

³On the rear of the card at the top left corner is printed "Connecticut State Police, Hartford 1, Conn."; at the rear right, "State Bureau of Identification." At the rear bottom of the card is the statement, "Please furnish all additional criminal history and police record on separate sheet." Also, on the front of the card appears the date February 10, 1970. The rear portion of the card indicating a criminal history or record is covered by white paper taped to the back of the card.

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the better practice is to cover every questionable element of the card, including dates and other printed matter.

No error was committed in denying the motion for mistrial, and admitting the fingerprint exhibit. The court, in the exercise of its judicial discretion, could properly determine that the probative value of the evidence outweighed its prejudicial tendency; *State v. Moynahan*, supra; *State v. Marquez*, 160 Conn. 47, 52, 273 A.2d 689; *State v. Holliday*, supra; and that, by its cautionary instructions, the defendant would be assured a fair and just outcome. *State v. Grayton*, 163 Conn. 104, 112, 302 A.2d 246, cert. denied, 409 U.S. 1045, 93 S. Ct. 542, 34 L. Ed. 2d 495; *State v. Bausman*, 162 Conn. 308, 312, 294 A.2d 312; *State v. Savage*, 161 Conn. 445, 449, 290 A.2d 221. Further, during the course of the trial, evidence was produced and admitted without objection that the defendant had been arrested for assault on his wife.

The defendant next claims that activities conducted in the absence of his trial attorney denied him the assistance of counsel at critical stages of the proceedings and violated the sixth amendment. It is central to the constitutional principle that the accused shall enjoy the right to have the assistance of counsel for his defense and that "he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." *United States v. Wade*, 388 U.S. 218, 226, 87 S. Ct. 1926, 18 L. Ed. 2d 1149; see *United States v. Ash*, 413 U.S. 300, 93 S. Ct. 2568, 37 L. Ed. 2d 619.

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The record discloses that sometime before 8:07 p.m. on the night of the verdict the defendant's public defender left the courthouse and did not return. During his absence the jury were instructed on two separate occasions and returned their verdict.

The simple answer to the defendant's claim is that the record also discloses that an assistant public defender for New Haven County appeared for the defendant in the absence of the public defender.

During this period, the court called the jury to give them supplemental "Chip Smith" instructions; see *State v. Smith*, 49 Conn. 376, 386; instructed the jury, in answer to their question: "In case of a murder one verdict, are we the sole judges of penalty of life imprisonment or death?"; and received the verdict of the jury. At no time during this period did any factual or adversary issues arise; the only matters which faced the assistant public defender concerned questions of law. At all times during this stage of the proceeding, the defendant stood with counsel competent to represent and protect him. The claim of a sixth amendment violation is without merit.

Approximately two hours and forty-five minutes after the jury began their deliberations, at about 5 p.m., a time at which, traditionally, juries are excused for the day and in most instances even during their deliberations after a case has been submitted to them, the trial judge recalled the jurors into the courtroom, and the following occurred:

"The Court: I have called you all because of the hour. I am not trying to hurry your deliberations at all. I want you to have time enough to consider them, and consider them with all the thought that

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you can. However, I would like to know if it is a matter of a couple of hours, I can send out and get sandwiches. If it is a matter of more than that, and you want to have dinner, it can be arranged. I can send out and make those arrangements. *I cannot allow you to leave before I have some sort of a verdict.*

"You can readily see, if somebody got sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility. [Emphasis added.]

"Is anybody in a position to tell me how long you feel that you want, or whether sandwiches would do, or would you like a sitdown dinner?"

"A Juror: I think it is going to be a while.

"The Court: That is all I need to know. You may retire to the jury room, and arrangements will be made. Thank you very much."

The defendant asserts that the italicized statements made by the trial judge to the jurors were violative of his constitutional right to due process of law and trial by an uncoerced jury. Despite the defendant's failure to raise this claim in the trial court, we consider it because a fundamental right is involved and review may be made upon the record. *State v. Chesney*, 166 Conn. 630, 353 A.2d 783; *State v. Evans*, 165 Conn. 61, 327 A.2d 576.

The possibility of disagreement by the jury is implicit in the requirement of a unanimous verdict and is part of the constitutional safeguard of trial by jury. See *United States v. Harris*, 391 F.2d 348, 355 (6th Cir.); *Thaggard v. United States*, 354 F.2d 735, 740 (5th Cir.) (Coleman, J., concurring specially); *Jenkins v. United States*, 330 F.2d 220, 222 (D.C. Cir.) (Wright, J., dissenting), rev'd, 380 U.S.

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445, 85 S. Ct. 1059, 13 L. Ed. 2d 957; *Green v. United States*, 309 F.2d 852, 856 (5th Cir.). For a judge to tell a jury that a case must be decided and that a mistrial would be an impossibility is not only compelling in nature but is misleading in fact. While a defendant is not entitled to an instruction that a jury may "hang"; *United States v. Sawyers*, 423 F.2d 1335, 1340 (4th Cir.); *United States v. Bowles*, 423 F.2d 592, 596 (2d Cir.), cert. denied, 400 U.S. 928, 91 S. Ct. 193, 27 L. Ed. 2d 188; he is entitled to a jury unfettered by an order to decide. *Jenkins v. United States*, 380 U.S. 445, 446, 85 S. Ct. 1059, 13 L. Ed. 2d 957. When considered out of context, the statements in issue convey such an order, and, as such, constitute an impermissible, albeit undesignated, transgression into the province of the jury.

In assessing the impact of these statements, however, we must consider them from the standpoint of their effect upon the jury in the context and under the circumstances in which they were given. See *Jenkins v. United States*, 380 U.S. 445, 85 S. Ct. 1059, 13 L. Ed. 2d 957. We are not unmindful that a judge occupies a role of inherent power and dignity that commands a deference from the jury impossible to appraise precisely and that "[w]hat he tells the jury . . . has great weight with them." *LaChase v. Sanders*, 142 Conn. 122, 124, 111 A.2d 690. The charge to the jury, however, must be read as a whole, and an attempt to assert reversible error by culling a single phrase or inaccurate statement must fail unless it is reasonably probable that the jury were misled. *State v. Tropiano*, 158 Conn. 412, 433, 262 A.2d 147, cert. denied, 398 U.S. 949, 90 S. Ct. 1866, 26 L. Ed. 2d 288; *Penna v. Esposito*, 154 Conn. 212, 215, 224 A.2d 536; *Allard v. Hartford*, 151 Conn. 284, 292, 197 A.2d 69.

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The judge's statements, to a jury which had shown no indication of a deadlock, were made "because of the hour" to explain the reason for retaining them through supertime and to explain the potential for mistrial if a released juror were to become ill overnight. The judge prefaced these remarks with, "I am not trying to hurry your deliberations at all. I want you to have time enough to consider them, and consider them with all the thought that you can."

Even if there were a potential for misconstruction, this case does not present any evidence of coercion. The jury had shown no indication of a deadlock; there was no hint as to division. The uncontroverted facts showed beyond any reasonable doubt the guilt of the accused. After the court's 5 p.m. inquiry, the jury continued deliberations for several hours, and did not return a verdict until 9:25 that evening. Moreover, the jury, both prior to and after the statements complained of, received the "Chip Smith" instructions relating to the duty of a jury to attempt to agree.⁴ The defendant claims that the "Chip

⁴The words, as used in *State v. Smith*, 49 Conn. 376, 386, are: "Although the verdict to which each juror agrees must, of course, be his own conclusion and not a mere acquiescence in the conclusions of his fellows, yet in order to bring twelve minds to a unanimous result, the jurors should examine with candor the questions submitted to them and with due regard and deference to the opinions of each other. In conferring together the jury ought to pay proper respect to each other's opinions, and listen with candor to each other's arguments."

The court included in its original charge to the jury the following: "As you know, your verdict must be unanimous. It is true, of course, that the verdict to which each juror agrees must be his own conclusion and not mere acquiescence in the conclusion of his fellows. But that does not mean that each juror should pursue his own deliberations and judgment with no regard for the arguments and conclusions of his fellows, or that, having reached a conclusion, he or she should obstinately adhere to it without a conscientious effort to test its validity by other views entertained by other jurors on the jury, equally wise and justly resolved to do their duty."

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Smith" instruction, which was given sua sponte at about 8 p.m., exacerbated any coercive effect of the statements in issue.²

The defendant alleges that the thrust of the court's instruction, which did not quote *State v. Smith* verbatim, urged the minority jurors to yield to the view of the majority, and that it was coercive to give the charge sua sponte and "without any indication of a jury deadlock." We disagree. "We repeat the language in *State v. Walters*, 145 Conn. 60, 63-64, 138 A.2d 786, cert. denied, 358 U.S. 46, 79 S. Ct. 70, 3 L. Ed. 2d 45: 'The attack on the charge from *State v. Smith* [49 Conn. 376, 386] on the ground that it amounted to a direction that the verdict be whatever a majority of the jurors thought is without semblance of merit. The accuracy of the charge as a statement of the jurors' duty is not open to question. Its use has been approved by the Supreme Court of the United States. *Allen v. United States*, 164 U.S. 492, 501, 17 S. Ct. 154, 41 L. Ed. 528. Better than any other statement which has come to our attention it makes clear the necessity, on the one hand, of unanimity among the jurors in any

² The court said: "Good evening, ladies and gentlemen. I sense that you must be having a little difficulty in reaching your verdict. However, as I have told you time and again, your verdict must be unanimous. It is true, of course, that a verdict to which each juror agrees, has got to be his own conclusion and not the mere acquiescence in or the conclusions of his fellows. That does not mean that each juror should pursue his own deliberations and judgment with no regard for the arguments and conclusions of his fellows, or that having reached a conclusion, he or she should obstinately adhere to it without a conscientious effort to test validity by the views entertained by the other jurors. I am not telling you what to do. I am going to send you back in. Follow that theory, that you will resolve yourselves to do your duty and follow the thoughts of other jurors whom, I am sure, are equally as wise and have heard the same evidence. You may return to the jury room, and I hope it has shed some light. Thank you."

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verdict, and on the other hand the duty of careful consideration by each juror of the views and opinions of each of his fellow jurors, something without which no intelligent body of twelve would be likely to reach a unanimous result in any case where there was any substantial factual dispute. *Allen v. United States*, supra. For practical reasons only, its use has customarily been deferred until after a disagreement has been reported. *State v. Schleifer*, 102 Conn. 708, 725, 130 A. 184. . . .” *Tough v. Ives*, 162 Conn. 274, 278-79, 294 A.2d 67.

With respect to the court's language, “[n]o specific words are required if jurors are properly instructed that each juror's vote must reflect his considered judgment as to how the case is to be decided. If the jurors follow such an instruction . . . each vote will be for either conviction or acquittal and one of three decisions will necessarily result: (1) not guilty; (2) guilty; or (3) disagreement. The right to disagree is implicit.” *United States v. Bowles*, 428 F.2d 592, 595-96 (2d Cir.), cert. denied, 400 U.S. 928, 91 S. Ct. 193, 27 L. Ed. 2d 188. The court's words, which taken as a whole tracked “Chip Smith” and accurately conveyed the juror's duty, could only go to mitigate any alleged misleading or coercive effect of the court's earlier remarks.

Even after the court had given the “Chip Smith” charge, the jury deliberated for another hour indicating that there was no coercion from the statement made by the court at 5 p.m. See *State v. Walters*, 145 Conn. 60, 63, 138 A.2d 786, cert. denied, 358 U.S. 46, 79 S. Ct. 70, 3 L. Ed. 2d 45. When they returned about an hour later, some four hours after the 5 p.m. statement, it was to inquire whether they would be judges as to the penalty. After the court replied in

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the affirmative, the jury returned in ten minutes with the verdict. It is clear from this sequence that the jury's final agreement was not reached because of submission to any improper urging of the court, but upon their own deliberations and the answer given to them at the last inquiry. *State v. Bradley*, 134 Conn. 102, 112-13, 55 A.2d 114.

We cannot conclude that, in the context and under the circumstances in which these statements were made, the jury were, actually or even probably, misled or coerced. Thus, considering the three supplementary charges as a whole, the court was not in error in its instructions to the jury.

The defendant further claims that there was error in permitting the state to refresh the recollection of witnesses in the absence of a showing that recollection had been exhausted, in failing to instruct the jury as to the hearsay nature of the testimony of Jacquelyn Ralls, in admitting evidence through direct testimony of Gwendolyn Ralls that the defendant had committed other unrelated crimes, and in the court's failure to instruct the jury on the limited purpose of impeaching evidence.

With regard to some of these claims, no objection was made; to others, no exception was taken. With regard to all, the court was not informed of them in timely or distinct fashion during the course of the trial or by request to charge. See *State v. Smith*, 156 Conn. 378, 385-86, 242 A.2d 763; *State v. Bausman*, 162 Conn. 308, 313, 294 A.2d 312.

"We are constrained to determine the assignment of errors relating to a claimed violation of constitutional rights even though not raised at the trial level under circumstances previously stated, but claims

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of error in evidentiary matters where no exceptional circumstances require a departure from our rule will not be considered." *State v. Chesney*, 166 Conn. 630, 353 A.2d 783.

The final assignment of error briefed by the defendant is that he was denied effective assistance of counsel. Proof of incompetent counsel is held to a stringent standard and where such a claim is raised, relief may be obtained only when representation has been so woefully inadequate as to make the trial a farce and a mockery of justice. *Palmer v. Adams*, 162 Conn. 316, 321, 294 A.2d 297; *State v. Costello*, 160 Conn. 37, 40, 273 A.2d 687.

In support of this claim counsel on appeal argues that the public defender "filed no pre-trial motions whatever on behalf of the defendant. He filed no written motions at trial. Although the state's circumstantial case was extremely weak, he did not even move for a directed verdict or move to set the verdict aside. He presented no evidence at trial. He failed to object to highly damaging and clearly inadmissible evidence. Most shockingly, as the jury retired to decide whether his client should be placed in jeopardy of death, he left the courthouse never to return. Neither the record nor the transcript discloses his reasons for thus disappearing."

In the course of this opinion we have discussed the merit of some of these claims incidentally, specifically the failure of trial counsel to move to set aside the verdict and the absence of trial counsel during the deliberation of the jury and the return of a verdict. See pp. 415-16, *supra*. The assertion is also made that trial counsel "failed to object to highly damaging and clearly inadmissible evidence." In support of this, appellate counsel claims that the

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court improperly allowed into evidence "highly damaging" statements made by the defendant while in police custody on grounds that the *Miranda* (*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694) warnings given by the arresting officer were inadequate.

Inspector Malcolm E. McHenry of the Hamden police department testified that immediately after the arrest he warned the defendant "that he had a right to remain silent, anything he said could and would be used against him in a court of law. I also told him that he had a right to an attorney, and the attorney could be present while he was being interviewed by the police. I further advised him that if he could not afford an attorney, one would be provided for him free of charge. I also advised him that he could terminate any interview with the police at any time he so desired, and I also advised him that any statements he did make would have to be given freely and voluntarily without any promises given."

The defendant contends that *Miranda* requires^a that the suspect must be informed by "express warning," that he is "entitled to have appointed counsel made available immediately," and "present at the station house or other place of interrogation," and that the warnings as given were inadequate.

In resolving questions of the adequacy of the warning, courts have given precedence to substance over form. *United States v. Lamia*, 429 F.2d 373,

^aThe suspect "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694.

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376 (2d Cir.). "Words which convey the substance of the warning along with the required information are sufficient." *United States v. Vanterpool*, 394 F.2d 697, 699 (2d Cir.).

The words of warning to the defendant conveyed the substance of the *Miranda* requirement. The defendant was told that he had the "right to an attorney, and the attorney could be present while he was being interviewed by the police . . . that if he could not afford an attorney, one would be provided for him free of charge." The defendant having just been informed that he had a right to remain silent and that an attorney could be present while he was being interviewed by police was effectively warned that he need not answer any questions until an attorney was appointed if he so desired. That an attorney might not be available immediately or appointed until the time of presentment seems immaterial since the defendant was informed prior to questioning that he had the right to remain silent until the time when he did have an appointed attorney. See *Massimo v. United States*, 463 F.2d 1171, 1174 (2d Cir.); see also *United States v. Carneglia*, 468 F.2d 1084 (2d Cir.); *United States v. Lamia*, supra. We do not understand *Miranda* to require more. See *State v. Cobbs*, 164 Conn. 402, 417, 324 A.2d 234; *State v. Benitez*, 157 Conn. 384, 387, 254 A.2d 564.

The related claim that admission into evidence of these custodial statements violated §§ 54-1b and 54-1c of the General Statutes will not be considered except to comment that it is clearly without merit.

In another claim related to the defendant's in-custody statements, counsel on appeal asserts that

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permitting the jury to hear that the defendant invoked his constitutional right to remain silent violated the fifth, sixth and fourteenth amendments.

During McHenry's testimony concerning the post-arrest conduct and statements of the defendant, the assistant state's attorney asked whether the defendant, while he was at the Hamden police department, received a call from anyone and from whom. McHenry answered that at 8 p.m. he received a call from an attorney who stated that he represented the defendant and wanted to speak with him. When the defendant "got off the phone, he stated, on the advice of his attorney, he was not going to carry on any further conversation with the police. I respected his wishes, and terminated any further interview with him." That was the last contact McHenry had with the defendant as far as interviewing him.

The court, on its own motion, cautioned the jury that after speaking with his attorney, the defendant had a perfect constitutional right not to discuss anything further with the officers and that it was not to militate against him.

It is well established that it is constitutionally impermissible for court or prosecutor to comment on a defendant's failure to testify in his own behalf. *Griffin v. California*, 380 U.S. 609, 85 S. Ct. 1229, 14 L. Ed. 2d 106. Because of an inference of guilt which arises, it is also impermissible for court or prosecutor to comment on the defendant's silence in the face of in-custody accusations or interrogation. *State v. Bates*, 140 Conn. 326, 99 A.2d 133; *State v. Ferrone*, 97 Conn. 258, 116 A. 336; see *Miranda v. Arizona*, supra, 468 n.37.

The cases which the defendant cites in support of his claim and which stand for these propositions are

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inapplicable to the facts at hand. The defendant's statement that he would not carry on any further conversation was a voluntary one made after speaking with and on advice of counsel, as distinguished from a failure to deny an accusation. See *State v. Tryon*, 145 Conn. 304, 308, 142 A.2d 54.

McHenry's earlier testimony had indicated that the defendant, after being given the *Miranda* warnings, had, rather than remaining silent in the face of accusation and interrogation, made statements and answered questions. The testimony in issue went to show not only why the interview was terminated, but also that the defendant had an opportunity to speak with counsel and that the interview ceased when the defendant so desired. Under such circumstances, the testimony was neither impermissibly elicited nor improperly admitted. Moreover, the court's clear and emphatic instructions to the jury that the defendant had a perfect right to terminate the conversation and that it should not militate against him would go to dispel any adverse inference which might have arisen. See *State v. Tryon*, supra, 309.

Because these claims are so intertwined with the claim of incompetent counsel, we have decided to review them even though they were never raised and passed on in the trial court. Ordinarily, under such circumstances, some of these claims would not be considered. See *State v. Bartee*, 167 Conn. 309, 314, 355 A.2d 250.

As to appeal counsel's other assertions of incompetency, "[i]n determining whether a defense counsel was competent, we must be careful in using hindsight for in 'almost any case a hindsight combing of the record will reveal possible alternatives in trial

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tactics.' *United States v. Ballard* . . . [423 F.2d 127, 134 (5th Cir.)].'" *Palmer v. Adams*, 162 Conn. 316, 321, 294 A.2d 297. As we indicated in the *Palmer* case, referring to *Kruchten v. Eyman*, 406 F.2d 304, 312 (9th Cir.), the issue, therefore, is not what counsel should have done to constitute the proper representation of the defendant considering the case in retrospect, but rather, whether in the circumstances, as viewed at the time, the defendant received effective assistance of counsel.

Upon review of the record and the entire transcript, even if we were to apply a less than literal interpretation of the stringent standard for finding incompetent counsel, we cannot say that trial counsel's omissions or commissions amounted to representation so inadequate as to sustain such a claim.

There is no error.

In this opinion HOUSE, C. J., SHAPIRO and MACDONALD, Js., concurred.

BOGDANSKI, J. (dissenting). It has always been the policy of this state that it is more important to enforce the time tested safeguards erected by the law for the protection of the innocent than to subvert them in order to prevent an apparently guilty person from escaping punishment. *State v. Holup*, 167 Conn. 240, 246, 355 A.2d 119; *State v. Mayell*, 163 Conn. 419, 428, 311 A.2d 60. In this case the trial court's instruction to the jury, considered in or out of context, was such an impermissible transgression into the province of the jury as to deprive the defendant of due process of law in violation of the fourteenth amendment to the United States constitution and article I § 8 of the constitution of this state.

A trial judge is forbidden to tell a jury that it must reach a verdict. In *Jenkins v. United States*, 380 U.S. 445, 85 S. Ct. 1059, 13 L. Ed. 2d 957, the trial judge told a deadlocked jury: "You have got to reach a decision in this case." The Supreme Court found that instruction to be coercive and reversed the conviction in a per curiam decision. The instruction in this case that "I cannot allow you to leave before I have some sort of a verdict. You can readily see, if somebody got sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility [emphasis added]," could only have had a coercive impact upon the jury and must be regarded as that kind of peremptory command by the trial judge so summarily condemned in *Jenkins v. United States*, supra.

"If the accused be guilty, he should none the less be convicted only after a fair trial, conducted strictly according to the sound and well-established rules which the laws prescribe." *State v. Ferrone*, 96 Conn. 160, 169, 113 A. 452. "[T]he principle that jurors may not be coerced into surrendering views conscientiously held is so clear as to require no elaboration." *Jenkins v. United States*, supra, 446; cf. *Brasfield v. United States*, 272 U.S. 448, 47 S. Ct. 135, 71 L. Ed. 345; *United States v. Dunkel*, 173 F.2d 506 (2d Cir.).

I would find error, set aside the judgment and order a new trial.